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The Indian Parliament as an Institution of Accountability

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Acronyms

BJP	Bharatiya Janata Party
CAG	Comptroller and Auditor General
DRSC	departmentally related standing committee
GDP	gross domestic product
MP	member of Parliament
MPLADS	Members of Parliament Local Area Development Scheme
TRIPS	Trade-Related Aspects of Intellectual Property Rights
WTO	World Trade Organization

Summary/Résumé/Resumen

Summary

This paper examines the institutional challenges facing the Indian Parliament. It argues that over the years there has been a decline in the effectiveness of Parliament as an institution of accountability and oversight. It shows that the instruments that Parliament can use for accountability—motions on the floor, oversight powers, the committee system—are increasingly being rendered dysfunctional. The fact that the Indian economy is globalizing has also eroded the power of Parliament in two respects. Much of economic decision making is now increasingly governed by international treaties, and the Indian Parliament is one of the few parliaments in the world that does not have a system of effective treaty oversight in place. These treaties are a fait accompli by the time they come to Parliament. Second, the Indian state, like many other states, is restructuring its regulatory framework with more powers being delegated to non-elected institutions. This process of delegation can increase transparency and accountability, but parliamentary oversight of these institutions remains very weak.

The weakness of the Indian Parliament has often slowed down legislation. But it has also given the executive more powers. The authors argue that these are manifest in the increasing number of ordinances that have been used as a substitute for legislation and weak financial oversight. After years of wrangling, the Parliament finally passed the Fiscal Budget Responsibility and Management Act as a means of putting financial discipline on the government. But day-to-day parliamentary scrutiny of the executive in financial matters remains weak.

In 2002, when the Indian Parliament celebrated its fiftieth anniversary, Indian commentators rued the palpable decline of what Jawaharlal Nehru had termed as the "majesty" of Parliament. With much of Parliament's time wasted on rowdiness and disorder, and theatrics replacing debate, there are serious concerns about whether Parliament has become dysfunctional. While "unparliamentary" behaviour by members of Parliament (MPs) has undoubtedly robbed Parliament of the mystique that often underpins authority, the weakness of Parliament as an institution of accountability stems from many factors, both within and outside the institution.

While India's public institutions need wide-ranging reform, Parliament faces a daunting challenge. First, it is increasingly becoming ineffective in providing surveillance of the executive branch of government. The oversight function of the legislative branch of government is always likely to be highly politicized. Parliament is, after all, a political body, which represents constituent interests, brokers deals, and advocates views in a partisan manner. Nonetheless, even relative to these limited expectations, one would expect the oversight function to be stronger in an era where there is widespread disenchantment with government and resource scarcity is acute—rather than the converse. Second, there is an ever-growing gap between the complex demands that modern legislation places upon MPs on the one hand, and their capacity and inclination for attending to that legislation on the other. Third, the profusion of political parties in Parliament, most of which are institutionally weak, has substantially increased the barriers to collective action.

But if this paper has any implications for these issues, it is to emphasize that, to a large degree, Parliament's inability to come to terms with these challenges is as much of its own making as the product of any general structural changes in Indian politics, or the economy. Rather, the Indian Parliament has self-abdicated many of its functions. For example, the authors find no reason whatsoever, other than indifference, to explain why the committee oversight system is so weak. They assert that Indian politics has become a lot more fractious and fragmented. In such an environment, the imperatives of electoral and party politics give politicians great incentives to delay important legislation just for the sake of delay. The delay in legislation does not mean that there is better qualitative improvement in legislation. It simply means that Parliament is more an oppositional space rather than a forum for genuine debate. There is also a growing sense that for individual MPs, doing good work in Parliament is not linked to any political

rewards, either in their constituencies or within their political parties. This reduces the incentives for good parliamentary performance.

While it is true that legislation is becoming increasingly complex and demands a set of technical skills few parliamentarians possess, much of the inattention to legislative matters is due to Parliament's own predilections and incentive structures. Parliament is becoming a less effective voice on fiscal management, on the economy, on social policy and on the terms on which India is integrating into the global economy, because of self-abdication and not because of uncontrollable exogenous factors.

According to the authors, however, in so far as structural changes in Indian politics have led to an adverse self-selection in who enters politics, and thereby the calibre of persons likely to enter Parliament, one cannot be too optimistic about the capacity of Parliament to rejuvenate itself. More important than the changes in the professional background of MPs is that those charged with making laws may be law breakers themselves. This does not augur well for the credibility of the Indian Parliament.

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Résumé

Cette étude porte sur les défis institutionnels du parlement indien. Les auteurs font valoir qu'au fil des années le parlement comme institution de contrôle a perdu de son efficacité. Ils montrent que les instruments dont le parlement peut se servir à cette fin—motions de parlementaires, pouvoirs de contrôle, commissions—ont été peu à peu rendus disfonctionnels. Le processus de mondialisation de l'économie indienne a aussi grignoté le pouvoir du parlement à deux égards. De plus en plus aujourd'hui, les décisions économiques sont régies par des traités internationaux, et le parlement indien est l'un des rares parlements au monde qui n'ait pas de système efficace de contrôle des traités. En matière de traités, le parlement est mis devant le fait accompli. Deuxièmement, l'Etat indien, comme beaucoup d'autres Etats, restructure ses pouvoirs de surveillance et en délèguent davantage à des institutions non élues. Ce processus de délégation peut accroître la transparence et la responsabilisation, mais le contrôle qu'exerce le parlement sur ces institutions reste très faible.

La faiblesse du parlement indien a souvent ralenti l'adoption des lois mais elle a aussi donné plus de pouvoirs à l'exécutif. Preuve en est, selon les auteurs, le nombre croissant de décrets qui se substituent aux lois et le contrôle assez relâché des finances. Après des années de querelles, le parlement a finalement adopté la loi sur la responsabilité et la gestion budgétaires comme moyen d'imposer au gouvernement une discipline financière. Mais le contrôle qu'il exerce au quotidien sur l'exécutif en matière financière reste vague.

En 2002, lorsque le parlement indien a célébré son 50ème anniversaire, les commentateurs indiens se sont lamentés sur le déclin de ce que Jawaharlal Nehru appelait la " majesté" du parlement. Les scènes de chahut et l'indiscipline faisant perdre au parlement une grande partie de son temps et la mise en scène remplaçant le débat, les craintes que le parlement ne soit plus adapté à sa fonction se confirment. Si le comportement déplacé de certains parlementaires a sans aucun doute ôté au parlement l'aura qui est souvent la base de l'autorité, la faiblesse du parlement comme institution de contrôle tient à de nombreux facteurs, tant intérieurs qu'extérieurs à l'institution.

Les institutions publiques indiennes ont besoin d'une réforme en profondeur, mais le parlement se trouve placé devant un défi quasi insurmontable. Tout d'abord, il est de plus en plus inapte à surveiller l'exécutif. La fonction de contrôle qui revient au législatif est sans doute toujours très politisée. Le parlement est, après tout, une institution politique qui représente les intérêts des électeurs, négocie des compromis et défend des points de vue de manière partisane. Cependant,

même si l'on en espérait pas plus, on s'attendrait, à une époque où les gouvernements suscitent un désenchantement général et où le manque de ressources se fait cruellement sentir, à ce que la fonction de contrôle se renforce, plutôt que l'inverse. Ensuite, il y a un décalage sans cesse croissant entre la complexité de la tâche que les lois modernes imposent aux parlementaires et leur capacité et leur désir de s'en acquitter. Enfin, la profusion des partis politiques au parlement, qui sont pour la plupart institutionnellement faibles, a multiplié les obstacles à l'action collective.

Si l'on peut tirer des conséquences de cette étude, ce sera pour souligner que l'incapacité du parlement à relever ces défis tient autant au parlement lui-même qu'à des changements structurels généraux survenus dans la politique ou l'économie indienne. Le parlement indien s'est lui-même démis de nombre de ses fonctions. Les auteurs, par exemple, ne trouvent aucune autre raison que l'indifférence pour expliquer la faiblesse du contrôle exercé par les commissions. Selon eux, la vie politique indienne s'est considérablement fractionnée, fragmentée. Dans un tel contexte, les impératifs de la politique électorale et partisane poussent les hommes et femmes politiques à différer l'adoption de lois importantes juste pour le plaisir de différer. Le retard mis à les adopter ne s'accompagne pas d'une amélioration qualitative des lois. Il tient simplement au fait que le parlement est davantage un lieu d'opposition qu'un espace de vrai débat. Quant aux parlementaires, ils s'aperçoivent de plus en plus qu'ils ne s'attirent aucune rétribution politique, que ce soit de leurs circonscriptions ou de leurs partis politiques, en faisant un bon travail au parlement. Ils ne sont donc guère incités à agir en parlementaires consciencieux.

S'il est vrai que les lois deviennent de plus en plus complexes et exigent des compétences techniques que possèdent peu de parlementaires, une grande partie de l'inattention aux affaires législatives vient des prédilections du parlement et de ses structures d'incitation. Si le parlement est moins efficace lorsqu'il traite de la gestion fiscale, d'économie, de politique sociale et des conditions dans lesquelles l'Inde s'intègre à l'économie mondiale, c'est par démission et non à cause de facteurs exogènes indépendants de sa volonté.

Cependant, si l'on en croit les auteurs, dans la mesure où des changements structurels survenus dans la vie politique indienne ont abouti à une fâcheuse sélection interne des candidats à l'entrée en politique, et donc de la stature des personnes ayant de bonnes chances d'être élues au parlement, on ne peut pas être très optimiste quant à la faculté de renouvellement du parlement. Les changements touchant aux professions dont sont issus les parlementaires sont secondaires si l'on pense que ceux qui sont chargés de l'élaboration des lois peuvent être eux-mêmes des contrevenants. Cela augure mal de la crédibilité du parlement indien.

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Resumen

Este documento examina los retos institucionales a los que se enfrenta el parlamento indio. Sostiene que con los años ha habido un declive en la eficacia de parlamento en cuanto a la rendición de cuentas y la supervisión. Demuestra que los instrumentos que el parlamento puede usar para la rendición de cuentas—mociones en la cámara, poderes de supervisión, el sistema de comités—se hacen cada vez más inoperantes. El hecho de que la economía de la India se está mundializando también ha desgastado el poder parlamentario de dos formas. Una gran parte de la toma de decisiones económicas está ahora controlada por tratados internacionales, y el parlamento indio es uno de los pocos parlamentos en el mundo que no tiene montado un sistema eficaz para supervisar los tratados. Cuando llegan al parlamento esos tratados ya son hechos políticos. Además, el Estado indio, como muchos otros Estados, está reestructurando su marco regulador delegando más poderes a instituciones no elegidas popularmente. El proceso de delegación puede aumentar la transparencia y mejorar la

rendición de cuentas, pero la supervisión parlamentaria de estas instituciones sigue siendo débil.

La debilidad del parlamento indio a menudo ha ralentizado el proceso legislativo. También ha dado más poderes al ejecutivo. Los autores sostienen que esto se manifiesta en el número creciendo de decretos que se están usando, en vez de leyes, y una débil supervisión financiera. Tras años de debate, el parlamento finalmente aceptó el Proyecto de Ley sobre la Gestión y la Responsabilidad Presupuestal y Fiscal para imponer disciplina financiera al gobierno. Pero la supervisión cotidiana parlamentaria del ejecutivo en asuntos financieros sigue siendo débil.

En 2002, cuando el parlamento indio celebraba su quincuagésimo aniversario, los expertos indios lamentaron el declive palpable de lo que Jawaharlal Nehru había llamado la "majestuosidad" del parlamento. Como la mayor parte del tiempo parlamentario se ha gastado en invectivas y desorden, y como la teatralidad ha sustituido a los debates, existen graves preocupaciones sobre si el parlamento se ha vuelto "disfuncional". Aunque ciertos comportamientos indignos de miembros del parlamento han sin duda robado a la institución parte de la mística que a menudo sustenta la autoridad, la debilidad del parlamento como institución para la rendición de cuentas viene de varios factores, tanto del interior como del exterior de la institución.

Mientras que las instituciones públicas indias necesitan reformas amplias, el parlamento se enfrenta a un reto desmoralizante. Primero, el parlamento resulta cada vez más ineficaz a la hora de supervisar el poder ejecutivo. La función de vigilancia del poder legislativo probablemente siempre será algo muy politizado. El parlamento es, al final y al cabo, un órgano político, que representa los distintos intereses de los votantes, que negocia acuerdos, y promueve puntos de vista de manera partidista. No obstante, aun teniendo en cuenta estas limitaciones, uno podría esperar que la función de supervisión sea más fuerte en una época en que existe una amplia desilusión con el gobierno y en que la carencia de recursos se hace sentir agudamente—en vez de lo opuesto. Segundo, hay una división constantemente creciente entre las exigencias complejas que impone la legislación moderna a los miembros del parlamento por un lado, y la capacidad e inclinación de estos miembros a hacer caso de esta legislación, por otro. Tercero, la multiplicación de los partidos políticos en el parlamento, la mayoría de los cuales son institucionalmente débiles, ha puesto sustancialmente más barreras a la acción colectiva.

Pero si este estudio aporta una lección a este debate, es su énfasis en el hecho de que, en gran parte, la incapacidad del parlamento para sobreponerse a estos retos se debe tanto al parlamento mismo que a cualquier cambio de estructura general en la política india, o en su economía. De hecho, el parlamento indio ha abdicado varias de sus funciones. Por ejemplo, los autores no encuentran razón alguna, sin contar la indiferencia, para explicar porqué el sistema de supervisón organizada en comités es tan débil. Aseguran que la política india se ha vuelto mucho más conflictiva y fragmentada. En un entorno así, los imperativos de la política electoral y de partidos han dado a los políticos grandes incentivos para postergar la adopción de legislación importante simplemente por postergarla. El retraso legislativo no significa que haya mejorado la calidad de las leyes. Simplemente significa que el parlamento es un sitio donde se hace oposición sistemáticamente en vez de ser un foro de debate auténtico. También hay un sentimiento creciente de que para cada parlamentario, el hacer un buen trabajo no está vinculado con cualquier tipo de premio político, ya sea en su circunscripción o dentro de sus partidos políticos. Esto reduce la motivación para obtener buenos resultados parlamentarios.

Aunque es verdad que la legislación se está haciendo cada vez más complicada y requiere una serie de competencias técnicas que pocos parlamentarios poseen, gran parte de su descuido de los asuntos legislativos tiene que ver con las predilecciones y la estructura de incentivos del propio parlamento. El parlamento está perdiendo su poder de gestión fiscal, su poder sobre la economía, sobre la política social y sobre otros ámbitos en los que India se está integrando a la economía mundial por culpa de la abdicación y no por factores exógenos incontrolables.

Sin embargo, según los autores, en la medida en que los cambios estructurales en la política india han creado un proceso de autoselección adverso en lo que toca a quien entra en política, y por lo tanto a la calidad del personal que puede entrar en el parlamento, uno no puede ser demasiado optimista en cuanto a la capacidad de ese órgano para rejuvenecerse por sí solo. Más importante que los cambios en el perfil profesional de los parlamentarios es que los encargados de hacer las leyes pueden ser ellos mismos infractores de las leyes. Esto no es de buen augurio para la credibilidad del parlamento indio.

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Introduction

Over the past half-century, India has been a complex experiment in institutionalizing democratic accountability through parliamentary institutions. During this period, the country has sustained, against great odds, a lively, stable, multicultural and functioning democracy with regular and free elections, an independent judiciary and a vibrant civil society. While Indian politics has been contentious and has intermittently lapsed into violence, India's democratic institutions have shown remarkable endurance. India's democratic experience has been a prodigious act of faith. When India adopted universal suffrage in 1951, there was no precedent for millions of illiterate and property-less people being enfranchised. Indians had great hopes that universal suffrage would produce a quiet and steady social revolution that would loosen the power structure of Indian society, ensure to all Indians the expansive list of rights promised to them under the Constitution and bring about greater well-being. India's overall record is decidedly mixed. While it has sustained free institutions, widened the scope of democratic participation and, compared to its own historical past, made significant gains in economic growth—especially in recent years—India's performance on a range of human development and governance indicators is still decidedly lacklustre.

This paper assesses the performance of the premier institution of representative democracy in India: Parliament. But undertaking the task of assessing Parliament immediately encounters one methodological problem. Can its overall performance be judged in any terms other than the performance of Indian democracy as a whole? To what extent can Parliament be held responsible for the successes and failures of Indian democracy? To what extent can the *institution of Parliament* be studied independently of the performance of *parliamentary democracy*? For the purposes of this paper, these questions are best avoided. We will work on the assumption that Parliament is not insulated from the effects of wider society and from the broader social and political context within which it is located. Some of the full measure and impact of the success of Parliament cannot be understood without taking into account those wider relationships. After all, to the extent that India has been a functioning democracy within which diverse interests have found expression, and insofar as these diverse interests have had to reconcile themselves to each other through political compromise, the institution of Parliament has had an important role in facilitating these objectives.

However, our primary focus in this paper is the *internal* workings of Parliament as an institution. In particular, we assess the functioning of Parliament in terms of its institutional mandate, not in terms of the overall results it produces. For example, it is conceivable, indeed in the Indian case quite likely, that periods where Parliament has functioned well as an institution and where it has discharged the constitutional functions assigned to it relatively sincerely, have also been periods of less than impressive economic performance simply because India chose many of the wrong economic policies. Parliament is of course responsible for many of those choices, but those choices may not reflect its failure as an *institution*. Conversely, achieving success in economic performance may be quite compatible with poorly functioning institutions. So, while in a general sense it remains the case that the overall success or failure of a society reflects on its institutions, and especially one as important as Parliament, it is in principle possible to study an institution in terms of its constitutionally assigned mandate, rather than overall outcomes.

The second difficulty in assessing Parliament in India is that the functioning of Parliament is closely related to the functioning of other key institutions of a democracy. It is a familiar fact that the performance of legislators in a parliamentary system is more an outcome of the influence of the political party to which they belong than anything else. The fact that legislators are nestled in other institutions, such as political parties, which exercise great power and influence over them, raises a methodological problem. To what extent can the successes and weaknesses of Parliament be attributed to its own mandate and rules of functioning, and to what extent can these be attributed to the functioning of other institutions? To illustrate, there is a widespread sentiment, expressed by legislators and citizens alike, that the quality of

parliamentarians, judged by their qualifications and commitment, seems to be declining. Whether or not this is true in some objective sense remains debatable. While India's parliamentarians have much higher levels of formal education than in the past (see figures 1a, 1b and 1c), more of them also have criminal backgrounds—estimates vary between 10 per cent and 20 per cent. The latter is certainly likely to have an impact on the functioning of Parliament. However, its causes may not lie in the institutional workings of Parliament itself, but in the nature and character of political parties that select and recruit candidates, and perhaps even in the electorates that vote for them. In other words, it is not easy to isolate the effects of other institutions on Parliament. It may be that many of the debates concerning parliamentary reform in India have less to do with the functioning of Parliament itself than with other institutions that have an impact upon it.

Historical Overview

The Indian Parliament, a bicameral legislature, was formally inaugurated after the national elections in independent India in 1952. Its historical roots can be traced back to the Indian Councils Act of 1861 and the subsequent modest experiments in representative government carried out under the British. Beginning with the colonial councils of the nineteenth century, the legislative councils that followed the Montagu-Chelmsford Reforms of 1919 aimed at gradually developing representative institutions of the "natives". These institutions were very limited in the powers they possessed. It was only after the Government of India Act of 1935 that the presence of elected Indian representatives in the legislative councils became significant. However, they were not successful in transferring power in any real sense to elected representatives. The advent of the Second World War led to the imprisonment of most of the leadership of the Indian freedom struggle and the end of legislative reform aimed at self-rule. It was only after the drawing up of the Constitution and the creation of the twin Representation of the People Acts in 1950–1951 that national elections led to the first Parliament of an independent India (Morris Jones 1957).

The Indian Parliament represents the kind of democratic politics that few could have envisaged when universal suffrage was introduced in 1951. Its composition, especially in the Lok Sabha—the lower house or House of the People—has been a reliable index of the changing political preferences of Indian voters. The social composition of Parliament has changed considerably over the years, reflecting the general fluidity of power that has come to characterize Indian politics. India has become one of the more intensely politicized societies in the world, and many of these tensions are reflected in the debates and even in the chaos in Parliament. From its inception as an elite coterie of British educated lawyers, its members today are drawn from a variety of social strata and occupations. In the twelfth Lok Sabha, lawyers were the third largest occupational category behind "political and social workers" and "agriculturists", the former presumably a cover for many professional politicians. An analysis of the members of the Lok Sabha elected in the fourteenth general elections in 2004 showed that India's parliamentarians are both substantially richer and more criminally inclined than the electorate. Over half of the members of Parliament (MPs) have assets of over Rs.5 million and more than a quarter have more than Rs.10 million,[1] and nearly a quarter had criminal cases against them.[2] Parliament, however, continues to lag behind in the representation of women, which has hovered between 8 per cent and 10 per cent. Through quotas, a certain number of seats have been earmarked for historically marginalized groups—notably the Scheduled Castes and Tribes—and this has ensured the representation of these groups in Parliament. Consequently, while imperfect, Parliament is a reasonable representation of the diversity of social interests.

[1] As the exchange rate between rupees (Rs.) and the US dollar has fluctuated over this period, the amounts have been left in rupees. However, just as an indication, the exchange rate in January 2006 was $1 = Rs.44.

[2] Data from the Public Affairs Centre (Bangalore) study on MPs in the 2004 Lok Sabha.

Whether Parliament has been successful as a means to control the exercise of executive power is a more debatable matter. One of the most precarious episodes for parliamentary democracy was the "state of emergency" that Prime Minister Indira Gandhi declared in 1975. Most political analysts believe that this was done to preserve her political position and was not warranted by the national interest. There is also a general sense that the procedural norms that are the basis of parliamentary practice began to erode, particularly after the mid-1970s. The weakening of political parties, the multiplicity of political parties represented in Parliament—from five in the first Lok Sabha to nearly 40 in those elected a half-century later—and the changing nature of constituent services and re-election incentives have all transformed the institution of the Indian Parliament. But despite many shortcomings, Parliament has endured as an institution.

In this paper, we survey the Indian Parliament and examine three key facets of the institution:

1. the degree to which Parliament is an index of changing voter preferences,
2. the legislative performance and success of Parliament in ensuring the accountability of the government; and
3. the nature of the relationship between re-election prospects and constituent services.

Basic structure of the Indian Parliament

Of the two houses of Parliament, the Lok Sabha, with its 543 elected members, has by far greater legislative powers. It is led by the speaker of the house, who is usually nominated by the majority party, but votes only in the case of a tie. MPs are elected on the basis of universal adult suffrage. With 18 as the qualifying age to vote, India has the largest electorate in the world, now numbering over 620 million voters. Members of the Lok Sabha are elected from single member constituencies, in first-past-the-post voting, where the candidate with the largest number of votes is the winner. Voter turnout has typically hovered between 50 per cent and 65 per cent. Therefore, as might be expected, parties forming a government, even when they have seemingly overwhelming majorities in Parliament, often do so with a mandate from less than one-third of the electorate.

Whereas the Lok Sabha is elected directly by the people every five years, the Rajya Sabha, the upper house or the Council of States as the second house of Parliament, is a continuous body with its members elected by an electoral college. Each member is elected for a six-year term, and a third of the members retire every two years. The Rajya Sabha's 250 members are led by the vice-president of India who is the upper chamber's *ex officio* chair. The legislatures of the states elect 238 members, and the president nominates 12 members upon the advice of the Cabinet. Although the regional distribution of parliamentary seats makes clear the preponderance of the Hindi-speaking north, the fractured polity in this region has ensured that the other regions also have a strong voice.

The underlying logic for the Rajya Sabha has been that it acts in defence of state (subnational) interests, but in practice the capacity to do so has been limited. One reason for this is the numerical superiority of the Lok Sabha. In any joint sitting, the Lok Sabha outnumbers the Rajya Sabha two to one.[3] On balance, the Rajya Sabha may have a formal status equal to that of the Lok Sabha in the electoral college that chooses the president, but its constitutional standing and legislative powers are considerably lower. The Rajya Sabha has neither the power to introduce money bills nor to reject them. At most it can delay money bills for two weeks since at the end of that period a money bill pending before the Rajya Sabha is considered to have passed. A further reason for the lesser importance of the Rajya Sabha is the extended dominance of a single party—Congress—in national and state level elections. It was only after

[3] A joint session of Parliament can be called under Article 108 of the Constitution if the Rajya Sabha fails to adopt a bill passed by the Lok Sabha. Article 108 has been used to push through legislation on only three occasions: (i) in May 1961 to pass the Dowry Prohibition Bill; (ii) in May 1978 to pass the Banking Service Commission (repeal) Bill; and (iii) in March 2002 to pass the controversial Prevention of Terrorism Act with 425 votes in favour of the legislation, 296 against and 60 abstentions.

1978, when Indira Gandhi lost the national elections and the Congress Party no longer formed the national government, that for the first time the party affiliations of Rajya Sabha members were significantly different from those of the majority party in the Lok Sabha.

In recent years, however, broader political trends have increased the importance of the Rajya Sabha, although it is still limited relative to the Lok Sabha. First, the rise of regional parties, which began to control state governments more pervasively, has resulted in a greater divergence in the party affiliations of Rajya Sabha and Lok Sabha members. The different electoral cycles of the two congressional houses, coupled with the absence of a dominant party have meant that a party or coalition with a majority in the lower house is not guaranteed the same in the upper house. This has meant that the ruling coalition can be in a minority in the Rajya Sabha, which gives the upper house effective veto power on non-budget bills, although in rare cases the government can call a joint session of Parliament. This has meant that the government in power needs the cooperation of the opposition to get bills passed and has also made it increasingly difficult for parties to muster the two-thirds majority needed to amend the Constitution. Second, the profusion and weakness of political parties and weak coalition governments that have become characteristic of India in recent years have also resulted in greater political instability. Unlike the past, it is not rare for the Lok Sabha to stand dissolved. The Rajya Sabha, being a perennially standing body, has a modest advantage in these not-so-rare periods, although it cannot exercise the kind of parliamentary control over the Cabinet that the Lok Sabha is constitutionally empowered to do. The Constitution is silent on the conduct of government business during the interregnum when the Lok Sabha is non-existent, and when the Rajya Sabha is the only wing of Parliament that continues to function. Since the Rajya Sabha is the only representative wing of Parliament that is available for consultation in the period between the dissolution of one Lok Sabha and the election of the next, it is likely to—or at least should—be more actively consulted and involved by the caretaker government in office before important decisions are made.

In both houses, the requisite quorum is 10 per cent of the membership. Decisions on most bills are made by a majority of the members present and voting and, as we argue below, the quorum is often honoured in the breach. Legislation can in principle be enacted by a very small proportion of members in either of the two chambers. The primary objective of Parliament is to enact legislation, although it also has constitutional, financial and governmental powers. It is the sole body that can amend the Constitution, and has undertaken 92 amendments as of mid-2004 since the constitution was first adopted in 1950. It is also the only body with the power to raise taxes and spend money, including the authority to pass the annual budget. The failure of the government to ensure the passage of the budget is automatically a vote of no-confidence. Finally, the Cabinet is collectively responsible to Parliament. A significant innovation in the relationship between the government and Parliament was the creation of standing departmental committees in 1993 that now oversee each of the ministries. The impact of these committees as watchdogs on the actions of the government is discussed later.

Parliament and changing voter preferences

The membership and composition of the Indian Parliament have been a rough but reliable indicator of changing voter preferences. Although at one level this may appear to be a tautological statement, the proposition is rarely so straightforward in developing countries. Although the complex social heterogeneity of India seems self-evident now, it is all too easy to forget commonplace perceptions even as late as the 1980s that elections in India were no more than a means to rubber stamping the dominance of a single party, the Congress, or even the dominance of a single family, the Nehrus.

Significant alterations in who represents a particular parliamentary constituency and in the identity of the majority party in Parliament are sufficient, although not necessary, conditions for the proposition that Parliament is a reliable indicator of changing voter preferences. The history of parliamentary elections in the last half of the twentieth century suggests that there have been

significant changes in the composition of the Lok Sabha, the only chamber that depends upon direct election by voters. Even during the period of Congress hegemony in the first three national elections, and its somewhat more contested domination in the following two elections, there were substantial changes in the overall membership of the Lok Sabha. But after the resounding victory that Rajiv Gandhi wrested for Congress in the eighth Lok Sabha, the fortunes of different MPs have varied in a far less predictable manner.

As Agrawal (2005) maintains, the obvious argument against this evidence is of course that under parliamentary systems, where parties exercise significant control over who gets the party ticket and stands for election, it is not changes in individual constituency representation that are important, but changes in what the majority party turns out to be. On this score as well, the Indian electorate has shown a convincing ability to register its assessment of the party in power. Between 1951 and 1989—roughly four decades—India held nine general elections, on average one every four and a half years. Between 1989 and 1999, it had four governments—one approximately every two and a half years—and six prime ministers (see table 1). When a new government took over in October 1999, it was the fifth in four years. It was the first time since 1971 that an incumbent prime minister returned to power, and just the second time that the incumbent party returned to power.[4] No single party has won an overall majority since 1984, when the sympathy factor following the assassination of Indira Gandhi returned Congress to power with a large majority. Since then, Congress has been reduced from a long-time dominant position in Parliament to a minority, and only two governments—a Congress minority government led by P.V. Narasimha Rao between 1991 and 1996 and the National Democratic Alliance led by Atal Behari Vajpayee between 1999 and 2004—have lasted their terms. All other governments fell before their time. Paralleling the high frequency of government turnover at both national and state levels is the low incumbency rate of elected representatives in general; roughly half of all incumbents lose in an election.

Table 1: Government turnover in India

Lok Sabha general election	Duration	No. of governments
Ninth	15 months	2
Tenth	5 years	1
Eleventh	18.5 months	3
Twelfth	13 months	1
Thirteenth	4 years and 4 months	1
Fourteenth	Formed May 2004	

Source: Ministry of Parliamentary Affairs.

The Lok Sabha (House of the People): Some general trends

The power and prestige of Parliament depends in large measure upon the functioning of the Lok Sabha, whose members are elected directly by single member constituencies in a first-past-the-post electoral system. We have already discussed the ways in which the composition of the Lok Sabha is or is not a reliable index of changing voter preferences. Here, we would simply like to point out some of the other salient characteristics of Lok Sabha membership. As stated earlier, the turnover in the composition of Parliament is strikingly high, which affects the time horizons of legislators. The probability of being re-elected has been about even ever since the second Lok Sabha (Agrawal 2005). The number of *new entrants* in any Lok Sabha—that is, first-time members who have never before been elected to the Lok Sabha—is also very high, ranging between 25 per cent and 30 per cent in the last two decades (see table 2). This has a significant impact on the experience of legislators.

[4] In 1984, after the assassination of Indira Gandhi, the Congress was returned to power with Rajiv Gandhi as prime minister.

Table 2: First-time MPs: Seventh and eighth Lok Sabhas versus the twelfth and thirteenth Lok Sabhas

Year	Lok Sabha	Number of first-time MPs
1980–1984	7	140
1984–1989	8	187
1998–1999	12	123
1999–2004	13	188

Source: Lok Sabha Secretariat.

The lack of legislative experience in Parliament is highlighted by the fact that over the past half-century more than 90 per cent of legislators have served three terms or fewer, while less than 5 per cent of legislators have served more than four terms (see table 3). While there does not seem to be a discernable difference in the number of new members in Parliament over the last two decades (see table 2), greater political instability in recent years (see table 1) has resulted in parliamentarians not serving their full term. As a result, the decline in the number of years a Lok Sabha member of Parliament (MP) has served has, in all likelihood, declined significantly. Being an MP is not quite the lifelong perk as the term "career politician" that is usually applied to politicians would suggest.

Table 3: Distribution of the number of terms served by MPs, first to thirteenth Lok Sabhas

No. of terms	No. of MPs	Per cent
11	1	0.02
10	1	0.02
9	4	0.10
8	8	0.20
7	26	0.66
6	42	1.07
5	94	2.39
4	193	4.90
3	467	11.86
2	838	21.27
1	2265	57.50

Source: Lok Sabha Secretariat.

The second striking trend is that the formal education qualifications of parliamentarians have been steadily rising. The number of parliamentarians with just a high school degree or lower has steadily dropped from 41 per cent in the first Lok Sabha to 35 per cent in the sixth to barely 10 per cent in the twelfth (see figures 1a, 1b and 1c).

The number of parliamentarians holding a postgraduate or higher qualification has climbed from 20 per cent in the first Lok Sabha to 27 per cent in the sixth to almost a third of total MPs in the twelfth Lok Sabha. Thus, while there is a widespread perception that MPs are less qualified now than they were a couple of decades ago, this is probably more a reflection of the Indian education system than of the formal qualifications of MPs. Finally, despite rapid turnover and the number of new entrants, the average age of Lok Sabha MPs has increased modestly in the last few elections (see figure 2).

Figure 1a: Educational levels of the first Lok Sabha (1952–1957)

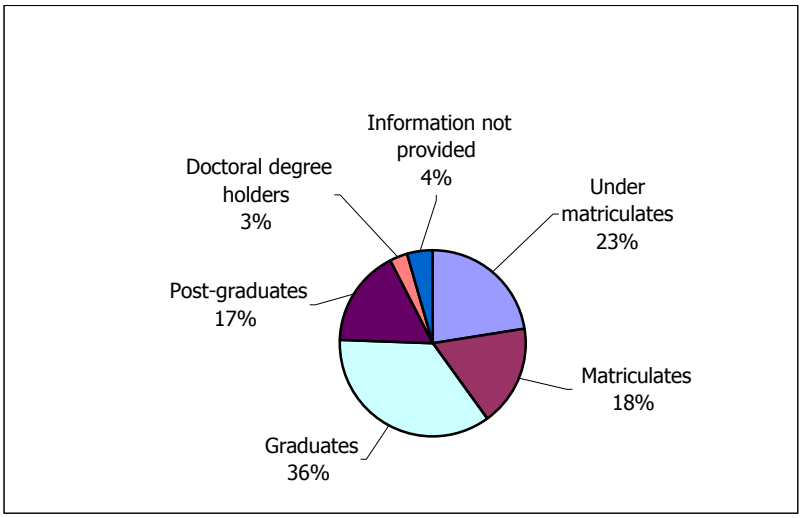


Figure 1b: Educational levels of the sixth Lok Sabha (1977–1979)

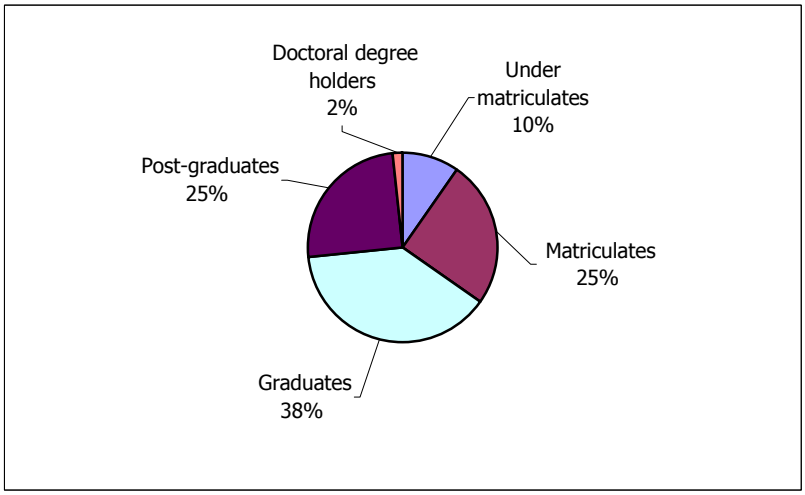


Figure 1c: Educational levels of the twelfth Lok Sabha (1998–1999)

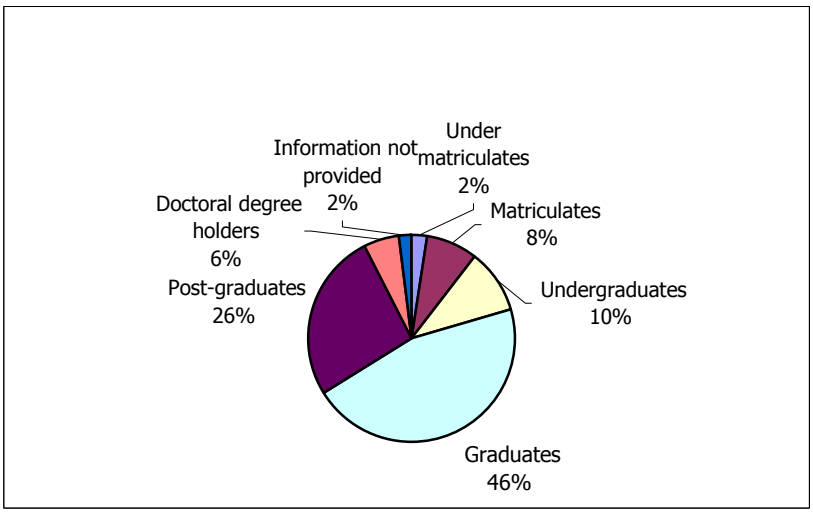
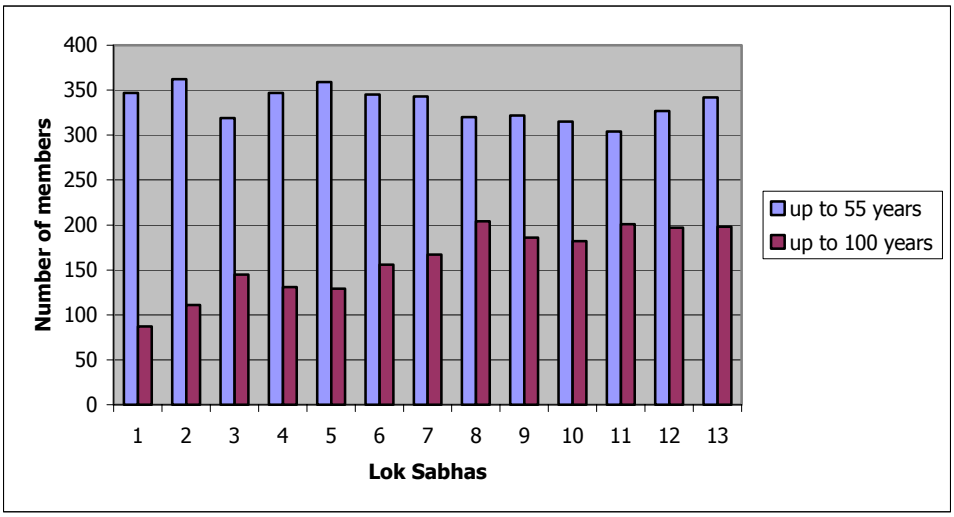


Figure 2: Ages of the members of Lok Sabhas since independence



The fact that educational attainments of members have been steadily increasing simultaneously with the growing perception that Parliament is less competent underscores another point that is addressed later in this paper. Simply put, MPs have very little incentive to take parliamentary activity seriously. Given the fact that people more often vote for parties than candidates, assiduous legislative work has virtually no direct electoral pay-off. Unlike earlier years when legislative skills served as a mechanism to work up through party ranks, parties today do not seem to, as far we can discern, place great premium on legislative skills. There are two reasons for this. One is the fact that some of the most technically sophisticated parliamentarians are not necessarily electable. Second, the upper house of Parliament, the Rajya Sabha, used to be considered a means for inducting skilled and eminent professionals into Parliament who might otherwise not be electable. But most political party representatives we talked to agreed that, with a few exceptions, legislative skills are not an important factor, even in the distribution of tickets to the Rajya Sabha.

Mechanisms of Accountability

Parliament serves as a locus of accountability and oversight in a democracy in at least two ways. First, Parliament is the agency through which government is held accountable. Second, elections are the mechanism through which parliamentarians are held accountable.[5] The actual workings of any Parliament will be governed by both of these considerations. Parliament is likely to hold government accountable with some view in mind of how it too will be held accountable in elections. Thus, a proper assessment of Parliament as an agent of accountability would have to examine the set of incentives and considerations that bear upon both forms of accountability.

To understand Parliament's effectiveness as an agent of accountability, we must examine the formal mechanisms available to it to sanction governments. We consider accountability here in its basic sense: for institution X to be accountable to agent Y, agent Y must be empowered by some formal or informal mechanisms to reward or sanction institution X for its activities. In principle, India's Parliament has various accountability mechanisms at its disposal. But, as we argue, these mechanisms are of limited effectiveness, primarily because it is the distribution of parties in Parliament—and the power that parties have over their individual legislators—that matters more than the availability of formal powers of sanction.

[5] There is some debate, however, whether instead of using elections as a sanctioning mechanism, voters should use elections as a "screening" mechanism to choose someone who shares their preferences and would act on behalf of their interests (Fearon 1999).

No-confidence motions

The foremost mechanism of accountability is the availability of a no-confidence motion (Laver and Shepsle 1999). Legislators can introduce a motion of no-confidence in the government, which, if sustained, would result in the fall of the government. But the effectiveness of no-confidence motions as a disciplining device depends upon the alternatives available to replace a sitting government. In a very simple sense, a government with a substantial majority in Parliament is unlikely to be much deterred by the introduction of no-confidence motions. The most egregious failure of Parliament to prevent abuse of executive powers occurred in 1975 when Indira Gandhi rammed resolutions approving the presidential proclamation of an internal emergency through both houses of Parliament, suspending the fundamental rights of citizens. The Congress party, then in power, voted en masse to approve the emergency proclamations by a vote of 336 to 59. Even when executive abuses of authority were as flagrant as those involved in the declaration of an emergency, it proved impossible to break the ranks of a dominant majority party.

No-confidence motions can be successful only in a very limited scenario where governments have a small majority, and a small part of that constituent majority has some reason to defect to another coalition or seek a general election that would result from the dissolution of government. In the case of coalition governments, where no single party dominates Parliament, some coalition partners in question would have to prefer an alternative set of arrangements—essentially a different coalition—rather than face elections. In the Indian case, no-confidence motions have been successful in bringing down the government only under such conditions. Since 1989, this has occurred four times. In 1989, the government headed by V.P. Singh was brought down; in 1990, the Chandrashekhar government met a similar fate; in 1997, the I.K. Gujral government fell; and most recently, in 1999, the A.B. Vajpayee government was brought down. In an average Parliament, four to five no-confidence motions are introduced. But their deterrent effect depends upon the contingencies of party politics, rather than the effectiveness of the mechanism itself.

In fact, the use of no-confidence motions as a sanctioning device in coalition governments is decidedly mixed. On the one hand, narrowly divided Parliaments with coalition governments—the prevailing situation in India in the last decade—gives small parties a good deal of sanctioning power. They can hold the government accountable by threatening to withdraw and ensure the success of a no-confidence motion. On the other hand, this leverage can also be used to attract substantially greater resources for particular parties. Thus, in principle, because of the threat of no-confidence motions, a government could respond to the pressure of particular groups within Parliament, even as it became *less* accountable to Parliament as a whole. Although the net effect depends upon the particular ends for which these parties exercise their bargaining power, the copycat and competitive effects of extracting greater resources as the price for staying in the coalition can be quite high. It has been argued, for instance, that the imperatives of keeping partners within a coalition led to the moderation of the Bharatiya Janata Party's (BJP) Hindu nationalist agenda. Its coalition partners could bring down the government if it insisted on its hard-line agenda. On the other hand, this threat has also led smaller parties to squeeze more resources from the Central government, exacerbating the country's fiscal crisis. The behaviour of the Telegu Desam and the Akali Dal, both regional parties, reflects this reality. They allowed the BJP to pursue its Hindu nationalist agenda, most notably in the riots in Gujarat and in education policies. while extracting an extremely high fiscal cost in the form of high rice and wheat support prices for farmers, all borne by the federal government. Thus, the manner in which a no-confidence motion produces accountability depends in part upon the incentives under which particular political parties are operating.

These considerations are of some relevance in examining the workings of a no-confidence motion. Recent debates in India on the use of no-confidence motions in Parliament have led some to suggest that parties should be allowed to vote out governments only if they commit themselves to an alternative and credible coalition before doing so, similar to the German model. The idea behind this move is to bring stability to coalition governments since no

coalition partner in an existing government would, under this rule, be able to bring down a government unless a credible alternative existed. This would ensure that even if the party system remained as fragmented as it did during the 1990s, the country would not be subject to the frequent elections that characterized that decade (see table 1). Implicit in this proposal is an important assumption that when small parties in Parliament bring down governments, they do so largely for their own benefit. This ability to bring down governments through no-confidence motions should not be confused with holding government accountable to Parliament. Thus, while no-confidence motions are a critical mechanism of the executive's accountability to Parliament, they can sometimes have perverse consequences. In our judgement, in the case of the Indian Parliament this mechanism has resulted in strengthening the bargaining power of small parties vis-à-vis the government of which they are a part rather than enhancing accountability to Parliament as a whole.

The opposition

The opposition is the constituent part of Parliament that has the most incentive to use the statutory powers of Parliament to keep the government accountable. In general, if the government commands a large share of the seats with unchecked majority control of the legislature, policy outcomes will reflect the government's position. If the government has relatively fewer seats and the opposition has bargaining resources, then policy making could be shaped by the opposition. The opposition's ultimate sanctioning weapon is that it might be a credible alternative in the next general election. But it can be argued that in the practice of parliamentary opposition in India, the opposition uses Parliament more to impugn the credibility of governments than to exercise accountability for the sake of good governance. Most commentators on Parliament agree that opposition parties in Parliament are relatively weak at generating accountability of government. This is because of a number of structural reasons. First, the effectiveness of the opposition simply depends upon the party composition of Parliament. Where governments have a comfortable majority, there is not much that the opposition can do to censure government. Second, opposition parties are unable to generate new information about government activities that can allow them to take the executive to task. Virtually all opposition parties are reactive rather than proactive, reflecting the extreme organizational weakness of Indian political parties (we return to this point later). Third, and unsurprisingly, opposition parties tend to focus on issues judged to have significant immediate political pay-offs rather than on the day-to-day functioning of government.

In one sense, the incentives for monitoring and oversight of the executive simply do not exist: the effort is high and the potential pay-off limited. Opposition parties are likely, therefore, to focus more of their attention on political scandals such as financial scams and corruption cases, where they can attack individuals rather than try to force institutional and systemic changes. During the tenure of the BJP-led government from 1999 to 2004, the Congress-led opposition used all of its might to stall proceedings on various corruption scandals, but did almost nothing to protest against the systemic governance weaknesses plaguing the country. When the BJP moved into opposition after it lost the elections in 2004, it began to behave exactly as Congress had done. Even with an opposition focused on corruption scandals, Parliament has yielded very few results and almost all of the parliamentary probes into these scandals have led nowhere. While in some cases this was because the evidence was generally inconclusive, in other cases it likely reflects collusion within the political class to avoid institutional changes, which, while improving governance, might adversely affect their common interests.

But perhaps the principal reason that parliamentary opposition parties in India do not scrutinize the day-to-day functions of government with any seriousness is that political parties in India are flimsy institutions. Unlike, say, the United Kingdom, the opposition in India does not have a shadow cabinet or a set of designated spokespersons with special expertise on the various subjects they handle. The result is that there is little scrutiny of the workings of most ministries and the legislation coming from them, although, as discussed later, the recently constituted system of parliamentary committees has begun playing a modest role.

The opposition in any parliamentary system faces another dilemma. It cannot always oppose the government because it may be blamed for obstructing business; nor can it get away with the credit for enacting legislation. The opposition is most effective when it neither colludes with nor obstructs government. Arguably, this dilemma hampers opposition parties immensely in India's Parliament. There are numerous examples of parties that will often not vote for legislation, not because they disagree with the contents of a particular bill, but because they do not want the government to be able to garner credit for passing it. Given the fragmented nature of parliamentary composition in India in recent years, the pace of legislation is extremely slow, even when there is substantive agreement among political parties. For instance, a bill to liberalize insurance markets in India was first introduced in 1993 and took a full six years to pass, with the two main parties objecting to the very bill they themselves had introduced when they were in power (Kapur 2000)! This dilemma is particularly acute where ideological differences between parties on most issues are small.

Two conclusions emerge from a quick perusal of the practice of parliamentary opposition in India. First, the idealized view of Parliament as a deliberative body, where all of the considerations relevant to legislation are aired and discussed and outcomes reflect—at least to some extent—the weight of stronger arguments, is a far cry from reality in any setting. However, in the Indian case, the problem is more acute and has worsened in recent years. Parliament in the public mind is essentially a site for adversarial combat rather than of deliberative clarity. It is for this reason, as we discuss below, that disruptive adjournments have become the main tools of parliamentary opposition rather than reasoned argument. Second, the ability of the opposition to function as an independent mechanism of accountability has little to do with the formal rules of Parliament. It is more a product of the drive, energy and political imagination of the opposition party.

A common factor emerges from our analysis of both no-confidence motions and the practice of parliamentary opposition. In India's parliamentary democracy, the formal mechanisms of accountability that Parliament possesses are considerably attenuated by the stranglehold that parties have over their members. In the entire legislative history of modern India there have been very few instances where individual legislators have crossed party lines, although parties with high rates of fission and pre-election cross-overs to obtain coveted party nominations are not uncommon. Such partisanship extends all the way down to the running of committees and other parliamentary functions. The reasons for this are not difficult to understand. In a parliamentary democracy such as India, access to power is through political parties. Independent legislators have constituted, on average, less than 1 per cent of Parliament. A party's record in government is the axis around which elections are contested rather than an individual's legislative accomplishments, and parties determine everything from the allocation of tickets to contest elections to ministerial jobs. The fate of an individual parliamentarian is heavily dependent upon the party. Hence, the requirements of the party's interest, rather than the obligations of parliamentary privilege are, in the final analysis, more decisive. In short, the competence of Parliament, its effectiveness and its capacity to deliberate and produce legislation will depend upon the functioning of political parties and their capacities and calculations rather than Parliament itself.

Parliamentary committees

Ideally, parliamentary committees would be a venue for the consideration of legislation introduced in Parliament. The volume and complexity of legislation, the demands on the time of parliamentarians and Parliament's preoccupation with the politics of the moment make it difficult to give legislative business the attention it requires. Parliamentary committees could also provide a more vigilant locus of accountability. There are two kinds of committees in the Indian Parliament: standing and ad hoc. Ad hoc committees are usually appointed for a specific purpose and can be either select or joint. Select committees comprise only members of one house, while joint committees include members of both houses. Each house also has functionally specialized standing committees. The most powerful and important functional

committees deal with financial matters—the Committee on Public Accounts, the Committee on Estimates and the Committee on Public Undertakings—and are discussed in more detail later. In order to improve parliamentary oversight of the executive, a second type of standing committee known as the departmentally related standing committee (DRSC) was created in 1993, though three of these committees were created on an experimental basis as early as 1989. In all, there are 17 DRSCs covering all of the ministries of the Central government.[6] These committees are elected by both houses of Parliament and vary in size and composition.

One of the more significant developments of the last decade or so has been the formal expansion of the functions of DRSCs, since they potentially constitute a potent mechanism for ongoing oversight of the executive. Most DRSCs can in principle, under the statutory powers accorded to them, review any aspect of the workings of a particular ministry. This includes, among other things, monitoring the annual performance of the ministry. A perusal through data concerning the modus operandi of most DRSCs establishes two facts: (i) most of them meet reasonably regularly, with the finance-related committees having as many as 80 meetings a year; and (ii) most of them produce, at regular intervals, reports into the workings of their respective ministry. But for a number of reasons, these committees have had a very limited impact on the production and quality of legislation and on the performance of the executive, even relative to the modest expectations of the oversight role of Parliament.[7]

First, it is a simple fact that Parliament itself tends to ignore the reports of its committees. Most committee reports are not tabled for deliberation and discussion in Parliament at all. The dilemma is that if the committee reports are at variance with the government, the majority has no interest in having them tabled; however, if they broadly uphold the government's position, they are considered superfluous. Both the government and the opposition, which sees itself as a potential government, have an interest in seeing that the parliamentary agenda does not veer too far away from the executive's intentions. There seems to be a great fear that allowing for the regular practice of discussing standing committee reports will generate an alternative set of initiatives within Parliament. While the statutory ambit of the committees has been extended over the years, they can hardly be said to perform a greater function in legislative business.

Second, the internal composition of parliamentary committees militates against their becoming more effective agents at disciplining the executive and contributing to legislative business. Unlike committees, say in the United States Congress, parliamentary committees that examine bills are, for the most part, temporary. They are organized for particular bills and are usually dissolved after the business of the bill is concluded. As a result, these committees are unable to do much of the work on legislation and have to rely on the executive for everything, from information to expertise. Since these committees are of short duration, their quid pro quo power vis-à-vis the government remains very weak.

Although in principle they are able to do so, most committees choose not to have close pre-budget scrutiny of estimates and complex expenditure plans of their respective ministries. In fact, the links between the executive and the committees are considerably weakened by the fact that not only are ministers not part of the committees, they also seldom appear before them—and (critically) are not obliged to appear—to present testimony. Most of the inquiries that committees conduct are directed toward civil service employees, even if the minister in question is the authority responsible for making decisions. Given the high turnover rate of civil service employees, in most cases, an employee called before a committee is obliged to defend

[6] The First Report to the tenth Lok Sabha stated that to "make parliamentary activity more effective, to make the executive more accountable, and to avail of expert and public opinion wherever necessary", standing committees should be convened. The Rules Committee recommended that these committees should, inter alia, consider (i) requests for grants from the ministries concerned and report them to the Lok Sabha; (ii) such bills pertaining to the ministries concerned as are referred to by the speaker and report thereon to the house; (iii) the papers on basic, major and important policies referred to them by the speaker and report thereon to the house; (iv) the annual reports and the reports on implementation of the policies and report thereon to the house; and (v) other matters referred to them by the speaker.

[7] Even in the case of the United States Congress, which is often seen as a role model, parliament's oversight function only became important since the late 1960s (Aberbach 1990).

the actions of a previous official or minister. In ensuring that ministers (or ex-ministers) do not have to defend their record in any serious examination by the committee that is a matter of public record, Parliament appears to be defending its own.

The impact of the DRSCs is also mitigated by the fact that members of those committees are elected annually. The turnover among members of the committees is high, just as it is in Parliament; therefore, they acquire little experience. The incentive structure for parliamentarians to serve well on select committees is also limited, with almost no rewards tied to committee service although, as discussed later, there are patronage possibilities in some of the committees. Because committees are in general weak, membership can seldom be used to wrest favours from the executive. In informal conversations with MPs, many conceded that being on a committee can sometimes give them leverage against particular political or civil society actors, but this is usually in the case of committees investigating specific matters. The fact that most committees are large, comprising anywhere between 15 and 40 members, makes them unwieldy.

As stated above, the most powerful and well-established standing committees are the three finance committees—the Committee on Public Accounts, the Committee on Estimates and the Committee on Public Undertakings—which are authorized to scrutinize government finances. The Committee on Estimates examines whether appropriations requested by the government have been prepared based on reasonable economic estimates and whether they are in conformity with existing laws and legislation. This committee has prepared over 900 reports, half of which are about action taken on previous recommendations. The Committee on Public Accounts examines the accounts for the sums granted to the government by Parliament. Since 1967–1968, a member of the opposition party has been the chair of the Committee on Public Accounts. In order to retain some continuity and experience in the membership and to help in pursuing uninterrupted investigation and examination of the items left over from the previous year, only one-third of the committee's members retire every year. The Committee on Public Undertakings was important in the days when state-owned enterprises dominated the "commanding heights of the economy". It examines the workings of the public undertakings specified in the Fourth Schedule, including the reports on public undertakings of the statutory Comptroller and Auditor General (CAG), the constitutionally charged body that audits state institutions and agencies.

The standing committees have considerable powers. They can summon witnesses and obtain any documents or records that may be required for their investigations.[8] There are, however, two caveats to this power. First, to limit politically motivated fishing expeditions, the speaker is the final arbiter of questions related to the relevancy of the summons. And second, the executive can decline to produce a document on the grounds that its disclosure would be prejudicial to the safety or interest of the state. Yet these three committees, despite limitations, can provide an ongoing disciplinary oversight of government. However, by paying little heed to the numerous CAG reports highlighting all manner of problems, Parliament has crippled a critical tool in enforcing accountability. Consequently, the CAG's strictures have little import. There is no timebound obligation by the audited public entities to respond to the CAG's reports, and many are not even discussed by the Committee on Public Accounts.

In theory, parliamentary committees were a much-needed institutional innovation that could allow Parliament to exercise its role more effectively. In practice, they have not been immune to the erosion of parliamentary norms. For example, the committee members undertake "study tours", often adding visits to places not included in the approved tour and accompanied by spouses and attendants, and they invariably coincide with tourist sites. Standing committees are

[8] Procedurally, this requires an order signed by the secretary-general of the House; applicable regulations are Rule 269: Power to take evidence or call for documents and Rule 270: Power to send for persons, papers and records.

comprised of subcommittees, which also undertake visits. In particular, all committees tour places where hapless public sector enterprises are obliged to lavishly host them.[9]

Special parliamentary committees—joint parliamentary committees—have been instituted to investigate large-scale allegations of corruption and mismanagement, such as the investigation of the corruption allegations surrounding a large arms deal, the Bofors scandal, or the various banking and stock market scams. India has witnessed several major financial scandals in recent years, two of which—in 1992 and 2001—were investigated by a joint parliamentary committee, a large and unwieldy committee with 30 members from both houses. The 1992 probe, which investigated the so-called Harshad Mehta scam, took almost two years to complete. It failed to conclusively establish what happened to the money, and there was little follow-up to implement the recommendations in its report on action taken. Despite the vast amount of documentation collected, the final report was the result of back-room negotiations that followed party lines. While the committee cast strictures on the different actors in the financial markets—banks, institutions, brokers and companies—it did not attribute specific accountability. More fundamentally, and unsurprisingly, it completely ignored the reality that the root of the problem lay in the government's ownership of much of the financial sector, which allowed politicians to put their hands in the till.

The 2001 scandal involved the dominant (government-owned) mutual fund, Unit Trust of India (UTI). Like its predecessor, three notable features characterized the workings of this committee. First, its members expected, and received, "royal" treatment on their "investigative" travels by state-owned enterprises and banks. The direct financial cost was one issue, but the moral hazard resulting from the committee members availing themselves of hospitality from those they were investigating was more problematic. They seemed less interested in seeking answers than ensuring deference and obsequiousness, which was amply supplied. The quid pro quo resulted in a weaker investigation. A second feature was the committee's large size and the lack of expertise. In particular, the lack of secretariat and committee expertise was apparent in the absence of a framework to sort and group the innumerable questions in order to eliminate repetition. The result was that the investigation amounted to an extended fishing expedition that tied down the entire financial sector bureaucracy for long periods of time.[10] And third, the depositions were held *in camera*, thereby ensuring that the most powerful players—in this case, large businesses widely suspected to be involved in the shenanigans—were not exposed to the glare of uncomfortable questions. By all accounts, the various joint parliamentary committees have neither resulted in any tangible information that could be used to discipline the executive, or initiated proceedings against wrongdoing by the executive, nor resulted in substantial systemic change that could prevent any recurrence in the future.

The development of a more robust and well-integrated committee system, with a stronger consultative role of committees attached to specific ministries, would appear to have many advantages. First, if the committee system were better developed it would ease the pressures on the floor time of Parliament. Committees could, on an ongoing basis, perform some of the functions that floor debates typically provide, such as eliciting information and providing surveillance. Institutionalizing the committees, by providing professional and specialized staff and an independent research capacity, would greatly enhance the functioning of Parliament. Second, committees could become a venue where consultations on legislation with the wider public could take place. Currently, Parliament has few institutionalized mechanisms for soliciting public or expert opinion. Select committees carry out such an exercise occasionally, although it is usually left to the ministry concerned to seek public input.

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[9] Recently, a parliamentary committee headed by Congress leader Pranab Mukherjee has been sharply critical of these practices and recommended scrapping visits to various places to collect evidence unless they are "absolutely essential" and then only after obtaining clearance by the presiding officers.

[10] According to press reports, the 2001 joint parliamentary committee was given more than 50,000 pages of information; there were reports of banks and regulators sending documents in truckloads!

Assurances and accountability

By one simple measure, Parliament is an enormously successful institution. Assurances given on the floor of the house carry considerable impact and authority and cannot be easily circumvented. According to the Ministry of Parliamentary Affairs, which acts as a link between the government and Parliament, the rate of implementation of assurances is very high, although both the number of assurances and implementation rates have dropped markedly since 1994 (see table 4). The decline in the per cent of assurances implemented could be the result of three factors: (i) a quirk of the data in that the most recent assurances are implemented with a lag time; (ii) the decline in the number of sittings of Parliament (see table 6); and (iii) a reflection of a more general institutional decline. Of course, the "sanctity" of assurances given on the floor of the house is not all there is to the concept of parliamentary accountability, but it does suggest that parliamentary talk is not all idle.

Table 4: Percentage of assurances implemented, 1985–2002

Time period	Lok Sabha	Rajya Sabha
1985–1989	99.8	99.8
1990–1994	98.6	99.0
1995–1999	95.5	96.8
2000–2002	83.4	80.0

Source: Ministry of Parliamentary Affairs.

Legislation and Accountability

In the Indian Parliament, legislation typically involves three stages corresponding to three readings of a bill. In the first reading, the bill is introduced, and its contents and aims are explained. After the second reading, the bill may be taken into consideration and put to an immediate vote. It can also be referred to a select committee of the house in question or to a joint committee of both houses, or even circulated for public opinion. However, this option is almost never exercised after a bill has been introduced. Instead, most bills are referred to select committees that report back to Parliament. At this point, the ministry in question can request that the bill be recommitted to a committee or be taken up for consideration by Parliament. A bill placed in Parliament is then scrutinized clause by clause, with members also having the right to move amendments. After all clauses have been dealt with and all amendments considered, the bill is put forward for its third and final reading. At this stage, no major amendments can be entertained, although amendments that pertain to clarification can sometimes be adopted. Under the doctrine of collective responsibility, the Cabinet must accept all amendments, even if the approval is *post facto*. After the bill has been put to a vote, the speaker certifies the passage of the bill, and it is sent to the second chamber where the entire process is repeated. After a bill has been passed by both houses, it is sent to the president and, if approved, becomes law.

It should be noted that even when Parliament has passed a bill, and it has been signed by the president, it does not become a law that can be enforced until a notification is gazetted. This step is sometimes "forgotten", either deliberately or otherwise, with the result that it is unenforceable. Thus, in leaving it to the judgement of the government to decide when the enactment should be enforced, Parliament allows the executive to de facto veto its collective will by not bringing the law into force. Since Parliament has not laid down an objective standard to guide the discretion of the executive in the matter of bringing the various provisions of an act into force, even the Supreme Court cannot compel the government to discharge the function assigned to it by Parliament.[11]

[11] One example concerns the definition of "industry" in the Industrial Disputes Act of 1947. In 1978, a seven-judge Constitution bench of the Supreme Court ruled that the definition of industry needed clarification by Parliament, since the definition included charitable

India's first 13 Parliaments passed more than 3,200 bills. The legislative output, while reasonably stable over the first four decades, perceptibly declined in the 1990s (see table 5). Political instability and a divided Parliament—with the ruling coalition often a minority in the upper house—were the principal causes. The slower legislative output is one reason why governments increasingly relied on ordinances (see table 7), by-passing Parliament in the process. This has also slowed reform.

Table 5: Number of bills passed by Parliament

Decade	No. of bills passed (annual average)
1952–1961	68.0
1962–1971	59.3
1972–1981	65.9
1982–1991	68.9
1992–2001	49.9

Source: Ministry of Parliamentary Affairs.

Private members' bills

Although private members can introduce bills, the government initiates most of the legislation, and most of the bills are introduced first in the popularly elected Lok Sabha. Private members' bills have become almost a non-starter in Parliament. During the ninth Lok Sabha, for instance, 156 private members' bills were introduced, but only eight came up for discussion, of which seven were withdrawn and the remaining one did not pass. In the tenth Lok Sabha (1991–1996) as many as 406 private members' bills were initiated. Only 31 of these were discussed and none was recommended to any parliamentary committee or passed. Yet, the paradox is that despite no hope of being passed, the number of private members' bills being introduced is increasing. Some have argued that procedural impediments are the principal obstacle to private members' bills. Only two and a half hours are set aside each week that Parliament is in session to discuss private members' bills. As one would expect in parliamentary systems, there is very little encouragement to take initiatives in Parliament that are independent of party approval. And given that as many as a third of the private members' bills in any given session of Parliament seek to amend the Constitution, it appears unlikely that the institution of private members' bills is being used by parliamentarians for any purpose other than to make symbolic statements.

Understanding Parliament's Weakness as an Institution of Accountability

The declining reputation of Parliament

Most observers, including parliamentarians, agree that the reputation of Parliament has generally declined over the last two decades. When thinking about the indicators and causes of this decline, a distinction needs to be made between the workings of Parliament as an *institution* and the *processes* that go into the making of Parliament itself. The former would include variables such as the number of sittings, behaviour on the floor of both houses, the quality of deliberations and so on, while the latter would include variables such as the electoral process

trusts under the term "industry". Parliament duly amended the definition in 1982. However, the Central government did not issue the notification enforcing an amendment to the definition of the term. Over the next two decades, three different high courts found it difficult to decide what to do in this circumstance. Finally, in 2002, the Supreme Court also found itself unable to give relief to the plaintiff—Union of India versus Shree Gajanan Maharaj Sansthan, April 2002—on the grounds that it could not compel the government to issue a notification asking it to implement the law passed by Parliament. Other examples of acts passed by Parliament, which were approved by the president but were not notified, include the 44th amendment to the Constitution relating to preventive detention, Section 30 of the Advocates Act 1961, which was not put into force for 27 years until it was considered by the Supreme Court in Aeltemesh Rein versus Union of India in 1988, and the Hire Purchase Act passed in 1972.

and the structure of political parties. While the two are interrelated, in this report we concentrate more on the former.

There are two significant challenges facing the process of constituting Parliament. The first is the thorny issue of campaign finance and the second is what in India is known as the "criminalization of politics". The structure of campaign finance laws and the imperatives of mobilizing funds have a decisive impact on the composition of Parliament. Many observers argue that the formidable challenge of raising funds for elections deters many citizens from actively participating in politics. In addition, the imperatives of raising electoral financing makes parliamentarians beholden to special interests and in some cases corrupts them, distorts the legislative process and causes considerable decline in the standing of Parliament. Furthermore, the unrealistic nature of Indian campaign finance laws, which set impossibly low limits on campaign contributions, makes politics an activity that is implicated in illegality right from the start. This illegality is also manifest in the second major source of concern about electoral practices: the criminalization of politics. This phenomenon involves not just charge-sheeted criminals entering legislative assemblies, but also the fact that a significant number of MPs are beholden to criminal elements. Nearly a quarter (23.2 per cent) of the MPs elected in 2004 had criminal cases registered against them. Over half of these had cases that could result in penalties amounting to imprisonment for five or more years. There is good reason to believe that criminals are entering politics in order to use political power to stymie investigations against them.

The difficult and vexing issue of designing a campaign finance system that is realistic, transparent and gives politicians the incentives to stay on the right side of the law would be the subject of a long discussion in its own right. But producing such a system has more to do with major reform of the structure of the Indian polity than with internal norms of Parliament itself. It will require reform of the Indian legal system, the promulgation of better laws and a greater emphasis on law enforcement, rather than simply tinkering with parliamentary rules. But insofar as the current parliamentarians have a vested interest in the system, political reform is not going to be easy. The general association of politics with corruption is going to continue to cast a long shadow over the authority of Parliament.

Furthermore, irrespective of the complicity of some MPs in illegal practices outside Parliament, their general conduct and demeanour inside Parliament is increasingly distorting legislative proceedings and inspiring less public confidence. There are a few straightforward indicators of the institutional malfunctioning of Parliament.

Duration of parliamentary deliberation

A simple examination of the number of sittings of Parliament, the number of hours per sitting and the number of transactions conducted when Parliament meets reveals a grim story. The lack of seriousness with which Parliament takes itself is starkly evident in the declining number of days it is in session. Compared to the 1950s, the number of sittings of Parliament has declined by about a third (see table 6). An analysis of the time spent on various kinds of business during the first to the twelfth Lok Sabhas reveals that the fifth Lok Sabha recorded an average of seven hours and 38 minutes per sitting, followed by the seventh Lok Sabha, which devoted an average of seven hours and nine minutes per sitting. However, there has been a recent decline in the trend and the average sitting of the twelfth Lok Sabha was six hours and 32 minutes. These have led to calls from the deputy speaker of the Lok Sabha for the legal stipulation of a mandatory minimum number of sittings for Parliament and state legislatures in order to provide more time for useful and effective legislative business (*The Hindu* 1999).

But even these numbers sharply overstate the degree to which Parliament, even when it is officially meeting, actually conducts its business. This is because of a sharp increase in adjournments of the house as a result of disorderly scenes and interruptions where nothing could be recorded and nobody could hear the MPs. For example, the 186th session of the Rajya

Sabha met for 72 hours, of which half were lost to interruptions and adjournments caused by disorderly scenes. Nearly one-fifth of the time of the fourth session of the twelfth Lok Sabha was lost due to similar reasons.[12]

Table 6: Number of sittings of Parliament, 1952–2003

Decade	Number of sittings of Lok Sabha (annual average	Number of sittings of Rajya Sabha (annual average)
1952–1961	124.2	90.5
1962–1971	116.3	98.5
1972–1981	97.9	85.5
1982–1991	92.7	79.4
1992–2001	81.0	71.3
2002–2003	79.0	78.0

Source: Ministry of Parliamentary Affairs.

Quorums

One striking indicator of the declining reputation of Parliament is that it now often functions without the required quorum as mandated by Articles 100(3) and 100(4) of the Indian Constitution. These articles require that at least one-tenth of the total members of the house be present in order to conduct business, and that it shall be the duty of the speaker of the house to adjourn or suspend the meeting until a quorum is reached. We were unable to collect systematic data on the violations of the quorum requirement for the simple reason that is has become normal parliamentary practice to disregard this requirement (Surya Prakash 1995; Kashyap 2000, 1998). In one year, 1982, only 26 members of the 543-member house were present to approve the Finance Bill, and sometimes proceedings have been conducted with a mere 11 members. Such instances could be multiplied endlessly. This absenteeism not only has a substantive impact on Parliament, it also undermines the symbolic authority of Parliament as a lawmaker. On the matter of quorums, Parliament is adopting a "don't ask, don't tell policy". Increasing absenteeism is a sign of parliamentary ineffectiveness.

Zero hour

A second major indicator of legislative decline is that attendance of parliamentary sessions is highest during what is known as zero hour. This allotted time in parliamentary proceedings allows members, with the permission of the speaker, to raise and debate unlisted matters. There is no written procedural requirement for zero hour, though it seems by common consent and attendance figures to be the most popular process. There are two reasons for this. First, it allows members to speak to a crisis or an issue with immediate repercussions. Second, the free-floating format allows members to grandstand on issues. This is usually the occasion for high-decibel proceedings in Parliament. By one calculation, matters raised during zero hour consumed as much as 13 per cent of the time of the tenth Lok Sabha, and this average is considered fairly typical.

Adjournments

The average time taken by adjournments and adjournment motions is roughly 10 per cent of the proceedings of a typical parliamentary session. Not only is the cost of such adjournments extremely high, this action also signifies two things. First, legislative proceedings are frequently disrupted to the point where there is no option but to adjourn. The disruption can take many forms: many members speaking simultaneously, the opposition not allowing government ministers to make statements and, increasingly, rushing to the well of the house and shouting down the speaker. In part, the overt tumult witnessed in Parliament is a rational response by MPs to the incentives created by the media, which gives much greater coverage to MPs who

[12] Government of India, Ministry of Parliamentary Affairs, Annual Report 1999–2000, Paragraph 5.4.

engage in this behaviour than those who busy themselves in parliamentary debates—the latter rarely get mentioned. The introduction of television has undoubtedly made matters worse, especially since many MPs believe that publicity, even bad publicity, especially if it makes it to the evening news, is better than no publicity. While Parliament has not yet seen the kinds of occasional physical violence that state legislative assemblies have experienced over the years, the situation is serious enough that in 1992 Parliament convened a Special Forum for the sole purpose of discussing maintaining decorum and discipline in the house. The primary legislative business of the Special Session convened in 1997 was to pass a unanimous resolution calling for greater discipline within Parliament. Second, the disruption of legislative proceedings suggests much of what is apparent during zero hour: that Parliament is often a site for grandstanding, rather than disciplined debate. By one estimate, the time lost due to disruptions in the Lok Sabha costs taxpayers Rs. 75 million in just one session.

In November 2001, in a major initiative aimed at bringing discipline and decorum to Parliament and legislatures, an all-India conference of presiding officers and parties adopted a 60-point code of conduct guideline aimed at sanctioning grave misconduct with suspension. The resolution was unanimously supported by over 300 leaders from all parties at both the federal and subnational levels. However, when the prime minister asked the opposition not to resort to any steps that would erode democratic values, the leader of the opposition, Sonia Gandhi, immediately disagreed saying that a "great deal of disruption" in Parliament was due to the government's reluctance to face the houses on controversial matters. Events since then have belied the resolution.

Legislators and constituencies

There is a striking paradox that illustrates the relationship between parliamentarians and their constituency. On the one hand, it appears from surveys that parliamentarians spend most of their time attending to the affairs of their constituents (Surya Prakash 1995). On the other hand, parliamentarians seem relatively uninterested or ineffective in utilizing grants and policies for the development of their constituencies. This is exemplified by the extraordinary failure of the Local Area Development scheme that we discuss in detail below.

According to the survey conducted by Surya Prakash (1995) and other anecdotal evidence, constituency work takes up a major proportion of a legislator's time. But this constituency work has some peculiar characteristics. Most MPs are granted a range of discretionary privileges from air and rail reservations, to gas connections, to preferential housing allotments. In a country where the demand for these services is high and the supply relatively low, one of the functions of an MP is to use discretion in securing particular goods for constituents. The use of discretionary powers, and an MP's general influence, also extend to attending to their constituents' individual needs. MPs will intervene on behalf of their constituents with the police, government officials and other public authorities on matters ranging from securing employment, transferring government employees and obtaining contracts. Since the government controls large areas of the economy, the volume of requests that a typical MP receives is enormous, given that an average Indian parliamentary constituency has a few hundred thousand voters. It is almost incumbent upon MPs to act as go-betweens on issues that affect *individual* constituents.

The fact that MPs often consider their primary function as a go-between says something about how the functions of representatives are seen in Indian politics. MPs are not often seen as *lawmakers*; most of their constituents are unaware of the bills they are associated with and they are seldom judged on policy accomplishments. In fact, in Surya Prakash's survey, about half of the MPs said that they were expected to be in their constituency even when Parliament was in session. To a certain extent, this is inevitable in a party-based parliamentary system, where the role and standing of parties is decisive. However, if MPs internalize the view that they are not principally lawmakers, it will have deleterious effects on parliamentary legislation.

It also seems that most MPs and their constituents seem to look upon MPs primarily as distributors of patronage rather than as policy makers. This could explain the apparent contradiction that MPs spend a lot of time in their constituency and on their constituents, but not nearly enough time on *policies*. This reality is exemplified by the Members of Parliament Local Area Development Scheme (MPLADS) to which we now turn.

MPLADS was announced in Parliament in December 1993. Under the scheme, individual MPs can recommend projects to the district collector (the head of the local administration); since members of the Rajya Sabha represent a state rather than a constituency, they can select works for implementation in one or more districts. The local administration must take the advice of the MP unless there are valid technical reasons or non-admissibility issues under the guidelines to not do so. The Ministry of Planning and Programme Implementation, which administers the programme, releases the funds directly to the collectors, who implement the projects through government agencies or *panchayati raj* (local administration) institutions. The funds are meant for the creation of durable assets that will be vested in government. There is a clear list of proscribed works,[13] private contractors are not to be engaged and the district collector can only implement projects that are specifically recommended by an MP in writing. At the start of the scheme, the quota for each MP was fixed at Rs. 5 million a year. It was raised to Rs. 10 million in 1994–1995 and to Rs. 20 million in 1998–1999, at which point the total resources amounted to nearly 2 per cent of all capital expenditures of the Central government. At the time of writing, the MPLADS Committee of the Lok Sabha recommended that the sum available to each MP be increased to Rs. 40 million.

Parliament's official rationale for this scheme is curious, to put it mildly. Prior to the formation of MPLADS, MPs recommended projects in their constituencies. They did not have direct involvement either in the administrative implementation of these projects or in any of the related financial details. Apparently as a result, as the concerned committee of the Rajya Sabha put it,

> he [an MP] had to remain merely a silent spectator and any element of corruption which generally creeps in the entire system of implementation of projects and financing of the same, the Member could not interfere due to some unavoidable limitations inherited in the entire scenario of the system. Apart from this, the ghastly countenance of the mechanics of mal-implementation/non-implementation or delayed-implementation of projects coupled by improper channalisation [sic] of funds for projects and absence of close monitoring of schemes contributed negatively to the entire scenario which gradually assumed a pernicious aberration from a normal state of affairs.[14]

To ensure that this did not occur, the MP must "involve himself in the *entire system* of implementation and completion of the project" (emphasis added).

From conception to execution, MPLADS is profoundly problematic. On the implementation side, the record is less than inspiring. Substantial amounts of the committed funds are unused, although recently there has been some improvement.[15] The CAG has issued two reports, one in 1998 and the other in 2001. The 1998 report highlighted many irregularities, which the second report found had not only persisted but also actually worsened. Funds were diverted for purposes that were prohibited, including projects for commercial and private organizations and expenditures on places of worship. Despite strict guidelines to the contrary, district collectors were found to have sanctioned and executed projects without the recommendation of the MPs and without technical authorization and administrative approval. Audits found cases of

[13] These proscribed projects include constructing government office buildings, works of private organizations, repair or maintenance works, building memorials, acquiring land, creating assets for individual benefit and building places of worship.

[14] The First Report, Committee on MPLADS, Rajya Sabha Secretariat, December 1999, http://parliamentofindia.nic.in/rs/mplad/firstr_mplad.htm, accessed in May 2003.

[15] Only 55 per cent of funds were used from 1993 to 1997, increasing to 64 per cent in 2000 and 72 per cent by 2002.

"irregular award of contracts", "deficient execution of works", instances of "excess expenditure", "excess payment", "overpayments to contractors", "wasteful expenditure", "miscellaneous irregularities in purchases", "abandonment of works", "execution of petty works", "irregular payment of supervision charges" and "frauds and misappropriation". An audit conducted in 2001 argued that

> in consideration of the various persistent instances of poor administration of the scheme, involving wastages, idling of funds, irregular and inadmissible expenditure and frauds highlighted in this and the earlier 1998 Report of the CAG, the Central Government needs to re-evaluate the need, manner and modality of resource transfer under the scheme as at present. [The scheme] has hardly served its main objectives.[16]

However, the conceptual underpinnings of the scheme are even more fundamentally flawed. The specific content of the strictures of the CAG on MPLADS is perhaps less important than its implications for Parliament as an institution of accountability. The CAG is an independent constitutional authority designed to scrutinize the accounts of the government and prepare reports to assist Parliament and state legislatures in exercising oversight of the executive. In the case of MPLADS, the CAG's report indicts the very body that is responsible for addressing the problems highlighted by its reports—a case of the fox being asked to guard the chickens. Consequently, it is not surprising that Parliament not only failed to address the many problems raised by the CAG in its 1998 report, but also doubled the financial allocation for the programme. And again, after another strong indictment of the scheme by the CAG in its 2001 report, the concerned parliamentary committee, instead of seeking remedial action, recommended yet another doubling of the resources allocated by the scheme! All this at a time when India's fiscal crisis persisted unabated. Moreover, these actions further undermined the effectiveness of the CAG as an institution of restraint not because of fundamental flaws in its design, but because of the weakness of the most important consumer of its products, namely, Parliament.

Moreover, the idea that the solution to systemic corruption and poor implementation of projects lies in the direct involvement of MPs in individual projects, which cumulatively are a very small fraction of overall development expenditures, rather than in using Parliament's power in pressing for broad institutional and policy change, defies logic. The opportunity cost is substantial since lawmakers' attention is drawn toward the minutiae of small projects. However, as the CAG reports make plain, insofar as the scheme's real intent is to serve the private interests of the MPs and not the public good, then the logic is clear. Members are not driven to provide public goods, but rather individual patronage (Agrawal 2005).

This reality is further underlined by the fact that some of the MPLADS guidelines blatantly contradict constitutional provisions and general financial rules. According to the scheme's guidelines, all funds released are non-lapsable. In other words, funds that are not utilized in a particular year can be carried forward to the following year. However, under Article 112 of the Constitution, all grants sanctioned by Parliament are valid *only* for the financial year.[17]

If a bill drafted by Parliament for the well-being of its own members contradicts the Constitution, and yet the programme continues to expand despite injunctions from its own watchdog body, then confidence in the institution's abilities to discharge its broad constitutional obligations cannot but erode. As Era Sezhiyan (2002), former chairman of the Committee on Public Accounts of Parliament has argued,

[16] The Report of the CAG for the Central Government, MPLADS, Union Government (Civil) Performance Appraisal (3A of 2001), www.cagindia.org/reports/civil/2001_book3a/index.htm, accessed in May 2003.

[17] General Financial Rule No.64 states "any unspent amount is not available for utilisation in the following year" (Sezhiyan 2002).

> the involvement of MPs in the administrative system, thereby weakening their capability to ensure the accountability of the executive to Parliament, cuts at the very roots of the parliamentary system of democracy in the country.

Some Implications of Parliament's Weakness as an Institution of Accountability

In an era when India's institutions have been severely stressed, the role of Parliament is particularly significant. The salience of Parliament is even more consequential in a period where India has embarked on wide-ranging policy and institutional changes that require new laws and external commitments. The implications of inaction by Parliament, both in terms of slow response to pressing national problems and a lacklustre commitment to critically scrutinizing legislation, are far reaching and long term. We examine Parliament's role in several critical issue areas below.

Role of Parliament in economic reform

Although India had begun to take steps to liberalize its economy in the 1980s, these actions were modest in scope. It was only in 1991, following a major balance-of-payments crisis, that the country undertook a major stabilization and structural adjustment programme, which entailed a fundamental reorientation toward a more open economy and a greater reliance on market forces. The shift in policy paralleled broad global trends, albeit less drastic ones. India's reform was implemented at a gradual pace relative to many developing countries. In part, this resulted from a high degree of risk aversion to rapid change among India's political elite, and in part from institutional constraints including the role of Parliament.

The reform opened India's economy in three fundamental ways. First, trade policy was significantly liberalized—although at the time of writing, India's tariffs continue to be considerably higher than for most other emerging markets. Second, the exchange rate was allowed to depreciate and the discretionary basket-pegged system gave way to a market-based "managed float"; the currency became convertible on the current account and partially on the capital account. These changes proved successful in insulating India from major currency crises that afflicted many emerging markets in the 1990s. Third, the reform opened the economy to foreign direct investment and portfolio investment, and over time 100 per cent foreign ownership was allowed in a large number of industries and majority ownership in almost all others.

The domestic liberalization gradually eliminated barriers that had hitherto granted a monopoly to state enterprises in many sectors. This was especially true of the infrastructure sector—for example, electric power, roads and railways, air transport, water, ports and telecommunications—services that were traditionally provided by the public sector, which were opened to private investment, both domestic and foreign. However, for the most part, this entailed deregulation rather than privatization. In the financial sector, reform eliminated the complex system of interest rate controls and built a more competitive environment in banking and, more recently, in insurance.

Economic reform—other than the push button variety such as exchange rates and changes in quotas and tariff rates—require institutional change. In turn, this requires a large body of new legislation and laws to underpin these changes. However, delay rather than debate seems to be the principal role being played by Parliament. In part, the delays are due to the changing norms of Parliament, including the increasingly disruptive sessions of Parliament over issues that leave little time to deliberate new legislation. In part, the delays are due to ineptness in the executive ranging from deficient floor management skills—which are necessary in shepherding legislation through Parliament—to poor legislative drafting skills. But a considerable part of the delay also stems from the role played by the numerous standing committees in each ministry, some of which are headed by opposition MPs.

Although the number of bills before the standing committees consists of a small fraction of the pending legislative business, these bills are also the most important ones for economic reform (Bhattacharjee 2002). Since these bills entail measures that are inevitably major policy issues for each ministry, the appropriate standing committee examines them after they are introduced in Parliament. The committees, by convention, are expected to give unanimous recommendations, which can clash with the partisan interests of many of their members. This either results in delays or a dilution of the original bill. But the executive also uses the standing committees to defer decisions when it is convenient. While the stridency of opposition has much to do with electoral pay-offs, opposing bills invariably have everything to do with politics and little to do with principle. The committees and the absence of a majority in both houses of Parliament delay legislation, the opportunity cost of which is substantial.

However, it should be emphasized that the delays also mean that even if there is little scrutiny by Parliament of the proposed legislation, they give more time to civil society to react. To put it differently, the system stops both good and bad bills from being approved. The tortuous history of the passage of the insurance and patents bills are two good examples. In 1994, the then Congress-led government decided to open up India's insurance sector—given its critical importance to unlocking long-term funds to finance desperately needed infrastructure investment—to allow foreign investment and private sector competition. But opposition parties—which included both the Congress and the BJP in turn—twice scuttled the bill. When it was finally passed in 2000, the BJP-led government had to concede four amendments to the bill that were tabled by the main opposition party on the strength of its numbers in the upper house. Similarly, the patents bill in 1999, which amended India's Patents Act to conform to its Trade-Related Aspects of Intellectual Property Rights (TRIPS) World Trade Organization (WTO) commitments, was finally passed in May 2002, but only after the government conceded key amendments demanded by the main opposition party regarding compulsory licensing to allow a government to grant licenses for patented drugs in the event of health emergency. In both cases, the delays were expensive, but the final bills were an improvement on the government's proposals.

The most egregious failure of Parliament lies in fiscal matters. A key constitutional responsibility of Parliament is to exercise accountability over the executive by carefully scrutinizing the budget. Parliament's indifference to this critical responsibility has resulted in India facing a major fiscal crisis that jeopardizes future generations. The federal government budgets of 1999, 2001, 2002 and 2004 were all passed by Parliament with virtually no scrutiny or debate despite the fiscal deficit climbing to alarming levels. In 1999, the government of Atal Bihari Vajpayee fell after the budget was presented, but before Parliament could approve it. Since the budget proposals are valid for only 75 days unless Parliament approves the Finance Bill and there was no possibility of an alternative government, the budget of a government that had been earlier defeated on the floor of the Lok Sabha was passed in a special session. The budget itself was voted and approved in less than half an hour with the Rajya Sabha spending only five minutes on it. The shortest ever budget session in India's history occurred in 2001. The railway budget was passed in a few hours with much heckling and almost no discussion. The general budget faced almost the same fate, but took one day to pass after the speaker made it clear that he did not want to become the first presiding officer in the country's parliamentary history to allow passage of the Finance Bill without discussion. In 2002, the Lok Sabha first passed the appropriations bill, and the government's revenue proposals were approved only a few days later, thereby abdicating its basic constitutional responsibility that the government cannot spend without Parliament's consent. In 2004, the roles were reversed and the former ruling coalition, now in opposition, repeated what the erstwhile opposition had done! The practice is even worse in state governments.[18]

[18] In many states, copies of the budget documents given to the legislative members are sold as waste paper without even opening the bundles. The budgets of many state governments contain two or three times more pages than the federal government budget of the United States.

On fiscal issues, the evidence is unambiguous since Parliament has neither the incentives nor the competence to act in a responsible fashion. Most MPs lack even a rudimentary knowledge of basic economics and as a result focus on visible policies, such as subsidies that favour their constituents, while ignoring the much larger effects of policies on their constituents that are less evident. Thus, economic reform that led to the reduction of protection of industry and depreciation of the exchange rate reduced the earlier bias against agriculture. By improving the terms of trade of the part of the economy in which the majority of the population works, it served the interests of a large number of MPs whose constituents are farmers. But MPs are far more focused on visible transfers such as subsidies for water, electricity and fertilizers than on macroeconomic policies that affect intersectoral terms-of-trade. In contrast, in 1997, Parliament passed the wage increase recommendations of the Fifth Pay Commission, while ignoring other recommendations, for government employees—a small minority of the working classes—with little consideration for the massive fiscal burden of about 1 per cent of gross domestic product (GDP). The effects cascaded from the Central government to the state governments with sharply negative consequences for the vast majority of voters. Although Parliament passed the Fiscal Responsibility and Budget Management Act in 2004, committing the government to eliminating the revenue deficit—which has been running at around 3 per cent of GDP—by 2009, there is little doubt that loopholes will ensure that this is unlikely to occur.

Parliament and financial accountability

There are also systematic obstacles that prevent committees from acting as effective watchdogs. These are most apparent in the two most striking failures of Parliament to hold the executive accountable. The most important is the fact that while committees can examine the budgetary grants of various ministries, there is *no parliamentary scrutiny and control of public borrowing*. In India, the Constitution and the laws place no limits on the extent of public borrowing. Parliamentary approval for any amount of internal or external borrowing is not required, except when it is part of the budget. Arguably, the single most potent crisis of the Indian economy is the size of its internal debt, which rose to 53.3 per cent of GDP by end-March 2001. The resulting large debt-service obligations have meant that the Lok Sabha in effect controls only a little over 30 per cent of annual government spending. Past fiscal profligacy has meant that elected representatives have less and less control over annual public spending. This is because budgetary spending is allocated either through appropriation—for which the government authorizes requests for grants—or by automatically charging the Consolidated Fund of India. Under Article 112 of the Constitution, payments toward interest and debt servicing are directly charged.[19] A fiscal responsibility act, which would put a statutory cap on the internal debt and require parliamentary approval every time the government wanted to breach it, would allow Parliament to exercise greater financial accountability.[20]

The current system of standing committees, by and large, is organized by ministry. Would the formation of a special standing committee on important national issues that straddle ministries, such as a committee on national debt, make a difference to Parliament's ability to scrutinize public borrowing, one of the most significant aspects of public policy? If so, arguably, the very same pressures that have led successive governments to wade deeper into debt would continue to remain in play. However, it is possible that the existence of something similar to a committee on public debt would have raised the consciousness of the importance of the issue in the body most responsible for the aggravation of the problem to begin with: Parliament itself.

A second noteworthy failure of Parliament's oversight of the executive is the large expenditures that caretaker governments have been able to undertake without subjecting themselves to parliamentary, or indeed any, scrutiny. Under the Indian system of government, a caretaker government—usually the incumbent government—is in charge of administration for the

[19] The Consolidated Fund of India is the repository of all revenues and internal and external loans and monies received by the government in repayment of loans.

[20] The flexibility to do so is already available under Article 292 of the Constitution. Regarding the executive of the Union Government to borrow funds, the Constitution allows for a limit to be fixed by Parliament under law.

interim period between the fall of a government due to loss of parliamentary majority and the next government taking office.

Under the Indian Constitution, no tax can be levied or collected unless Parliament or the relevant state legislature approves such a measure in the form of a law (Articles 112 and 256). The Constitution establishes a consolidated fund into which all of these taxes are deposited and only Parliament has the power to withdraw these funds. Articles 266 and 267 allow, but do not require, Parliament to establish a contingency fund. The relationship between these two funds is a matter of legal controversy, but for the purposes of assessing Parliament's oversight of the executive, two aspects of this controversy are important. The first is whether the Ministry of Finance can, without seeking the consent of Parliament as mandated under Articles 114, 115 and 116 of the Constitution, transfer funds from a consolidated fund to a contingency fund for unspecified purposes. According to the Constitution, Parliament must authorize all transfers and withdrawal from a consolidated fund.[21] But in effect, the Ministry of Finance has been appropriating funds from a consolidated fund without Parliament expressly approving the withdrawal, and Parliament has gone along and not insisted that every transfer from a consolidated fund to a contingency fund meet with its approval. In doing so, Parliament appears to have abdicated its public responsibility of assuring that *nothing* can be withdrawn from consolidated fund merely at the ministry's discretion.[22]

The second glaring anomaly is the way in which a contingency fund has been used by caretaker governments. The purpose of a contingency fund as stated in the Constitution is in the nature of an imprest. A contingency fund is placed at the disposal of the president to enable him (or her) to make advances to meet unforeseen expenditures pending authorization of such expenditures by Parliament under Articles 115 and 116. Thus, even the use of a contingency fund must be authorized by Parliament. The question is whether a caretaker government can satisfy this condition or not. By definition, a caretaker government cannot go to the house for approval, since the house stands dissolved. If the house is dissolved, there is no question of the government seeking approval from Parliament of the expenditure or authorization for appropriation and withdrawal of money from a consolidated fund for the purpose of returning an advance from a contingency fund. In effect, what a caretaker government can do, by ordinance, is increase the size of a contingency fund without limit, spend the money and then leave it to the next government to "refill" the contingency fund from the consolidated fund. For instance, Rs.147 billion was transferred to a contingency fund under Ordinance 30 of 26 December 1997, and an additional sum was transferred on 24 January 1998 increasing the total to Rs.324 billion. All of these funds were spent by the caretaker government after the dissolution of Parliament, to which it was responsible, and before the next Parliament was elected.

This episode illustrates two things. First, massive financial spending can take place without Parliament's express approval and by a government that is not even responsible to Parliament in the first place, underlying the need to create a mechanism for monitoring the financial accountability of caretaker governments, to which India is likely to be periodically subjected. Second, it demonstrates the striking manner in which the issuance of ordinances can be used to by-pass Parliament. This is the issue to which we now turn.

Ordinances and circumventing Parliament

Under the Indian Constitution, the president can, on the advice of the government and even in the absence of parliamentary legislation, promulgate ordinances to deal with matters that might arise from time to time. The purpose behind giving the president this power was to enable the government to make decisions in case of emergency or when Parliament was not in session.

[21] Article 266 lays down three independent conditions that must be satisfied to tap into a consolidated fund: (i) the appropriation must be in accordance with a law authorizing appropriation of money from a consolidated fund; (ii) the appropriation must be for a purpose provided by the Constitution; and (iii) the appropriation must be made in the manner provided by this Constitution as the manner for the appropriation of money from the Consolidated Fund of India. In short, grants from the Lok Sabha and appropriations by acts of Parliament are absolute requirements that require authorization for withdrawal.

[22] For an excellent discussion see Tripathi (2000).

Typically, these ordinances are valid for no more than six months and are subject to parliamentary approval. While the number of bills and ordinances passed over the years has been fairly constant, the use of ordinances sharply increases during periods of governmental instability. This was the case during the 1970s and even more so during the 1990s (see table 7). The latter period witnessed more caretaker governments as well as more coalition governments, where it would have been difficult to garner swift parliamentary approval. The only comparable time when presidential ordinances were frequently used was in 1975, the year of an extraordinary political crisis that led to the proclamation of emergency.

During 2000, half of the issued presidential ordinances were re-issued. This implies that the provisions that they contained could not be approved by regular parliamentary legislation for at least one year. The frequent use of presidential ordinances cannot be seen other than as a way of by-passing the need to secure parliamentary approval for important legislation. While many ordinances have legitimate justifications, Parliament will have to ensure that this practice does not become a method of giving the government short-term power that Parliament would not have approved.

Table 7: Ordinances promulgated by the president, 1952–1999

Decade	Number of ordinances promulgated (annual average)	Number of bills plus ordinances (annual average)
1952–1961	6.1	70.4
1962–1971	9.1	70.5
1972–1981	12.7	79.3
1982–1991	8.1	74.6
1991–1999	22.1	66.9

Source: Ministry of Parliamentary Affairs.

International treaties and the diminishing power of Parliament

If Parliament is the premier representative institution through which the sovereignty of the people is given concrete expression, nowhere has that sovereignty been more at risk in recent times than in the matter of signing international treaties and incurring international obligations. As India increasingly integrates into the global order by signing treaties, joining more multilateral institutions with sanction-binding power and entering into bilateral arrangements, it is becoming increasingly clear that Parliament's role in incurring these international obligations is quite minimal. This is despite the fact that the Indian Constitution expressly places treaty-making powers within the jurisdiction of Parliament. In much traditional political theory that delineates the separation of powers between the legislature and executive, treaty-making powers were largely left to the discretion of the executive. The legal tradition that India inherited from the British, by and large, upheld this position. A famous decision of the Privy Council in the case of Attorney General for Canada versus Attorney General for Ontario in 1937 argued that

> Parliament no doubt has constitutional control over the executive, but it cannot be disputed that the creation of obligations undertaken in treaties and the assent to their form and quality are functions of the executive alone.

This judgement went on to say that once such obligations are created, they bind the state against other contracting parties, but Parliament may refuse to perform them and thus leave the state in default.

Under Article 246 of the Constitution, Parliament is given exclusive power to make laws with respect to matters enumerated in List I of the Seventh Schedule of the Constitution. This list includes items such as "entering into treaties and agreements with foreign countries and implementation of treaties, agreements and conventions with foreign countries". Thus, it is

fairly obvious that treaty making is within the purview of Parliament and is not limited to the executive. But the de facto experience of entering into treaties since independence has left the matter solely to the executive. Parliament has not enacted any laws that regulate the manner in which the executive shall sign or ratify international treaties and covenants. Nor does Parliament decide the manner in which these treaties should be implemented, except in cases where such implementation requires Parliament to enact a law. Indeed, not only has Parliament not adopted any formal procedure for ratification, it has also explicitly rejected the requirement that treaties be ratified. As early as 1960, the speaker of the Lok Sabha declared:

> A number of treaties have been entered into so far, and they have not been brought up for ratification here. It does not prevent the government from bringing up any particular treaty for ratification before signing it, but it is *not obligatory to do so*.[23]

There have been intermittent attempts to formally bind the executive to a ratification procedure. In 1993, then Minister of Defence George Fernandes introduced a bill to amend Article 253 of the Constitution stipulating that treaties and conventions be ratified by not less than half of the membership of each house of Parliament and by the legislatures of not less than half of the states. During the 1990s, two other private members' bills were introduced to this effect. Unfortunately, like Fernandes' bill, they were not even brought up for consideration.

As far as we can determine, during the last two decades Parliament has only once debated whether it should legally ratify treaties. This was a debate conducted in the Rajya Sabha in response to a private member's bill introduced by M.A. Baby, in light of several WTO-related agreements signed by the government. The overwhelming sentiment of the house was that such ratification was unnecessary and would potentially lead to adverse consequences. In fact, in one of the longest speeches during the debate, Pranab Mukherjee argued more or less that if Parliament were obliged to ratify treaties, many treaties that had been of enormous benefit to India would not have been signed. Thus, historically there has been widespread sentiment that politicizing the signing of international treaties by subjecting them to a ratification procedure would weaken India's position rather than strengthen it.

It could be argued that the fact that Parliament has not taken an active role in monitoring the executive on the matter of international treaties does not imply that the executive has been given a free hand by the legislature. In a parliamentary system with a party government, presumably no government will enter into treaties that do not have significant support within their own parties, and by implication, among the legislators. In principle, this political dynamic should function. In practice, it appears that political parties, even of the government in power, are not widely consulted. There is a great deal of secrecy surrounding international negotiations and members of most political parties admit that they learn of international treaties only after the fact.

It has also generally been the case that many treaties of importance are brought to the attention of Parliament, but the government does not make a decision unless the sentiments of Parliament are clear on the matter. The Comprehensive Nuclear-Test-Ban Treaty has often been debated in Parliament and successive governments have used their assessment of parliamentary sentiment on the matter not to sign the treaty. The other side of the story is the WTO treaties signed in 1994 on which there was relatively little prior discussion in Parliament as a whole. The interesting analytical puzzle is this: Would a formal ratification procedure strengthen India's hand in international negotiations? Would it be the case that in international negotiations, India could use the fact that the treaties it signs will have to be ratified to put pressure on those with whom it is negotiating to change the terms of the agreement? Certainly, the American government uses the argument that a treaty will have to be ratified by the United States Congress as a bargaining tool. In the Indian case it is difficult to imagine what the

[23] From the Lok Sabha debates on 14 November 1960.

counterfactual would look like, but there is very little evidence that Parliament and the executive have strategically joined hands to strengthen India's bargaining position.

Another reason for not being too alarmed at the lack of parliamentary oversight of treaties is that most international agreements and treaties can be made effective only by incorporating them into domestic legislation. For example, a treaty that entails ceding territory would require amending the Constitution. But other treaties require incorporation into the national legal system via legislation approved by Parliament—for instance, many of the provisions that accrue from joining the WTO. It could be argued that even if Parliament did not have a role in signing a treaty, it would exercise its sovereign authority to decide whether or not an obligation stemming from an international agreement would become Indian law. Theoretically speaking, Parliament can, at that stage, refuse to incorporate the provisions of a treaty into domestic law and render the treaty ineffective. After all, the TRIPS agreements required that India's domestic patent laws be modified and the 1970 Patents Act be amended. The attempt to change India's patent law failed to pass muster in 1995, although it succeeded in doing so later. But, as the argument goes, the very fact that treaties require corresponding domestic legislation means that the authority of Parliament cannot be by-passed.

In principle, this argument has merits, but in practice, a treaty already signed is something of a *fait accompli*. It is true that Parliament refused on many occasions to incorporate the requirements of WTO-related agreements into domestic law; it is also equally true that it did so just before the provisions of these treaties were to be enforced. In fact, the whole tenor of Parliament's posture on the TRIPS agreement, for example, was against the provisions of the treaty—at least in public—until as late as 1997. The story of TRIPS-related legislation in India is sobering. The draft provisions of the TRIPS agreement ran counter to India's official negotiating position as outlined in a background paper submitted by a negotiating committee in 1989. The government then decided to refer the matter to a parliamentary standing committee of the Ministry of Commerce consisting of 40 MPs drawn from all political parties. In 1993, the standing committee submitted a report that vehemently opposed most of the provisions and stipulations of the draft legislation. It was, for instance, opposed to granting product patents, granting patents for 20 years and various conditions attached to the transition period for developing countries. But despite such overwhelming scepticism from the parliamentary standing committee, the government signed the TRIPS agreement without again consulting the committee or even Parliament itself.

For the subject under discussion, the substantive merits or demerits of the TRIPS agreement are beside the point. The crucial point is that the government signed a major agreement disregarding the recommendations of a parliamentary standing committee. This raises two questions. First, what is the point of such standing committees if their deliberations have no impact on the government and do not compel it to seek wider parliamentary consultation? Second, the government signed the TRIPS agreement despite the prevailing parliamentary sentiment against it at the time. This sentiment was subsequently expressed by Parliament's refusal to incorporate the TRIPS provision into domestic law until the deadline of the agreement drew near. It is, in some sense, impossible to tell whether Parliament ratified TRIPS by incorporating it into domestic law because it had genuinely changed its mind or because the agreement, once it was signed by the executive, was seen as a *fait accompli*. We have to bear in mind the fact that most international treaties that countries enter into in the contemporary world have self-enforcement provisions, inasmuch as the country in question has to suffer the consequences—sanctions, for instance—if it does not incorporate the requirements of the treaty into domestic law. In this sense, more and more international treaties are *fait accompli* and are treated as such by Parliament if they are presented to it after the fact.

The fact of the matter is that the impact of international treaties on domestic policy is vastly increasing in both scale and scope. It is manifestly the case that many of the international treaties that India has signed during the last decade have profound ramifications not only for economic policy, but also for the structure of the Indian polity as well. Let us take one example.

Under the Indian system of federalism, certain items are placed within the jurisdiction of the state government, some within the jurisdiction of the Central government, and some are on a concurrent list. Notwithstanding this separation of jurisdictions, Parliament, under Article 253 of the Constitution has

> the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any country or countries or any decision made at an international conference, associated or other body.

This provision, if extended to all domains, has the odd effect of effectively allowing the provisions of an international treaty to trump the basic architecture of the Constitution. For instance, under the allocation of subjects in the Constitution, agriculture is considered a state subject. A case can be made that India's signing of the agriculture-related provisions of the WTO not only has an impact on Indian economic policy, but also transforms the nature of Indian federalism. In effect, crucial parts of agricultural policy, a matter left to the states by the Constitution, is now being determined by international agreements that have not been discussed, let alone authorized, by state legislatures. The point is that the lack of parliamentary involvement in formulating, authorizing and ratifying international treaties may also diminish its capacity to define the terms of Indian federalism.

Multilateral agreements, global accords and international covenants will increasingly rely on treaties and treaty making to bring about changes that will directly or indirectly affect millions of people around the world. Such treaties obliterate the distinction between domestic and foreign policy. Much of parliamentary deference to the executive on treaties has its origins in an environment where the distinction between domestic and foreign policy could, to a certain degree, be maintained. In a changed environment, where international agreements determine the range of policy choices on issues from agriculture and tariffs to the structure of property rights, Parliament can maintain an important legislative role only if it is an effective part of the treaty-making process. The process of formulating and signing international treaties is posing a significant challenge to all representative institutions. Parliaments of Australia, New Zealand and the United Kingdom are all debating procedures to democratize treaty negotiations in a manner that does not entirely by-pass Parliament. Admittedly, as most parliamentarians in India acknowledge, subjecting treaties to parliamentary supervision is not an easy task. This makes international negotiations more complex and potentially endless as Parliament must have the institutional and infrastructural capacities to participate in such a process, and often its interests lie in not democratizing the treaty-making process. Treaties can, after all, give parliaments cover to push through legislation in the face of political deadlock. But Parliament cannot avoid the thorny question of disciplining international treaty making by the executive. It will have to consider issues such as: How does Parliament make treaty making subject to accountability? How does Parliament create clear norms that require prior consultation with Parliament on particular classes of treaties? Should Parliament legislate something for a formal ratification proposal? Parliament's viability as a key decision-making body will depend upon finding some procedures that address these concerns.

Conclusion

In 2002, when the Indian Parliament celebrated its fiftieth anniversary, Indian commentators rued the palpable decline of what Jawaharlal Nehru had termed as the "majesty" of Parliament. With much of Parliament's time wasted on rowdiness and disorder and theatrics replacing debate, there are serious concerns of whether it has become "dysfunctional". While "unparliamentary" behaviour by individual MPs has undoubtedly robbed Parliament of the mystique that often underpins authority, its weakness as an institution of accountability stems from many factors, both within and outside the institution.

While the Indian state and India's public institutions need wide-ranging reform, Parliament faces an even more daunting challenge. First, Parliament is increasingly becoming ineffective in providing surveillance of the executive branch of government. We are mindful that the oversight function of the legislative branch of government is always likely to be highly politicized. Parliament is after all a political body that represents constituent interests, brokers deals and advocates views in a partisan manner. Nonetheless, even relative to these limited expectations, one would expect the oversight function to be stronger in an era where there is widespread disenchantment with government and resource scarcity is acute—rather than the converse. Second, there is an ever-growing gap between the complex demands that modern legislation places upon MPs on the one hand, and their capacity and inclination for attending to that legislation on the other. Third, the profusion of political parties in Parliament, most of which are institutionally weak, has substantially increased the barriers to collective action.

While parliamentary democracy remains robust, there are significant institutional challenges facing Parliament. There have been far-reaching changes in the structures of governance worldwide that are effectively transferring greater power and legitimacy to non-elected institutions. The prestige, authority and power of and faith in the efficacy of institutions that are not subject to popular authorization, such as courts, independent central banks, utilities commissions, market regulators, independent human rights commissions and transnational institutions are unprecedented.

If delegation is understood as an authoritative decision that transfers policy-making authority and powers away from established representative institutions such as legislatures and executives to non-elected institutions, then we are witnessing what might be called a post-democratic delegation revolution. During the last decade or so, India, like many other countries, has also created many new statutory bodies that are designed, in theory at least, to have greater immunity from legislative influence and control. Courts are playing an unprecedented governing role in Indian politics, holding parliamentary legislation to greater scrutiny well beyond areas pertaining to the Court's core jurisdiction—the protection of rights—to exercising superintendence in policy matters. The number of transnational treaties and agreements that bind the Indian legislature is multiplying rapidly and there is great clamour to free even more agencies such as the Central Bureau of Investigation from government control altogether.

The increasingly widespread practice of constitutional democracies to remove certain types of policy choices from the direct control of electorally accountable office-holders is motivated by a variety of concerns. Delegation represents widespread disenchantment with the mechanisms of electoral accountability, which is, in this view, too blunt an instrument to secure the public good. Accountability itself has different components: transparency, representativeness, responsiveness and the power to sanction misdeeds. Electoral accountability may not always secure all dimensions of accountability effectively; for example, the fact that an institution is representative does not automatically make it responsive. Transparency is not the same thing as effectiveness. In some instances, delegation of powers away from ministries can apportion the lines of responsibility more clearly and secure more effective accountability.

Second, policy choices involved in modern economies often require a high level of technical complexity; good decisions depend on expertise and non-elected bodies empower experts. Third, independent agencies and delegation by treaty also allow governments and legislatures to make credible commitments by shielding decision making from short-term pressures and lobbies. These agencies provide political cover for making decisions that politicians have no incentive to make, but which are nevertheless in the public good. Fourth, a greater number of independent agencies provide more effective checks and balances. If the executive fails, for instance, the human rights commission or the courts can intervene; if politicians are economically imprudent, a host of regulatory agencies can ensure that the economy is not entirely brought to ruin.

The separation of powers that the proliferation of non-elected institutions represents can be seen as a kind of insurance policy, where we bind ourselves to protect us from the worst of electoral politics. Many of the considerations that lie behind delegation to non-elected institutions are compelling, and in many instances they help ensure that government by the people is indeed government for the people. But it would be stretching logic to pretend that the proliferation of delegation is synonymous with democracy itself. Indeed, the constitutional revolution of delegation raises profound questions about democracy itself. Delegation often has serious disadvantages from a democratic point of view. One of the virtues of democracy is that we can sanction those who act in our name. The more independent an agency, the more difficult it is to subject it to any kind of sanction, as court cases have demonstrated. Democracy, to simplify somewhat, is a means for authorizing officials to exercise power over us. By what means do non-elected institutions derive their authority? There are two possible answers to this question, neither of which is wholly satisfactory. The first response is to say that these institutions become authoritative by the quality of their decisions and by the output they produce. As long as the courts do a good job of protecting rights and regulators make sound economic decisions, they are legitimate. But this response often begs the question of whether there are independent criteria of what counts as good decisions.

A second response could be that since these agencies and statutory bodies are creations either of the Constitution or Parliament, there is no question of their legitimate authority. But the difficulty is that often these institutions are designed in ways that do not hold them directly accountable to Parliament. And the respective ministry whose jurisdiction covers the relevant agency simply denies that it has any responsibility since, after all, it is an independent entity. For example, just as Parliament cannot easily hold the Reserve Bank of India (the central bank) or the Securities and Exchange Board of India directly accountable, the Ministry of Finance cannot be held responsible for their decisions. We have yet to settle on a clear doctrine of how the democratic accountability of these agencies can be secured.

Most of the international treaties that India has been signing do not have prior parliamentary approval and become almost a *fait accompli* for the legislature. In some cases, delegation has impeded the ability of legislatures to make the relevant tradeoffs. If everything from the price of utilities to the technology to be used in broadcasting, from interest rate management to telecommunications regulation falls outside the ambit of legislative power, can legislatures make the relevant tradeoffs that they have been authorized to do? The virtue of independent delegation is also its vice: it increases the number of veto points. Curiously, we now have the possibility of politicians being penalized for decisions that they did not make and were powerless to control. If tomorrow the electorate decides that it is unhappy with utility pricing, for example, it is likely that politicians might be blamed simply because they are the only ones subject to popular sanction.

None of these concerns should be taken to imply that all forms of delegation to non-elected institutions are unjustified, but they increasingly pose a challenge to the central tenets of democracy. Representation is the central axis of a modern democracy. Decisions have to be linked to the citizens by a chain of authorization. In a democracy, we organize collective power through our representatives, who are also then subject to the sanctions we impose upon them. The difficulty is that non-elected institutions are often not representative; the link between their authority and citizens is so remote that it is often meaningless, and their independence from the legislature and the executive alike makes it difficult to sanction them. The proliferation of non-elected institutions could lead to a situation where governments have little incentive to mobilize consent, since decision-making power has been delegated. The proliferation of such delegation might mean that there is no representative body entrusted with integrating different spheres of social and economic life and making the relevant tradeoffs. To each agency its own power becomes a new principle. And there might be competing sources of law, as we are already witnessing in the contest between legislatures, courts and transnational bodies, all of which are becoming sources of law in their own right.

Many countries undergoing the delegation revolution have taken steps to ensure a greater modicum of democracy in delegation. For instance, Parliaments of Australia, Great Britain and New Zealand have democratized treaty negotiations in a manner that ensures that treaties do not by-pass Parliament. Or they have, in some instances, made independent agencies directly accountable to Parliament. Many legislatures have introduced mechanisms whereby the legislature and not the executive alone are part of the appointments process to these bodies. But most importantly, non-elected institutions are held accountable to Parliament through a system of public hearings, where they must justify themselves by giving publicly accessible reasons for their actions. India's Parliament has, on the whole, not been very effective in designing such accountability mechanisms.

Insofar as this paper has any implications on these issues it is to emphasize that much of Parliament's inability to come to terms with these challenges is as much of its own making as of the product of any general structural changes in Indian politics, or the economy. For instance, while it is true that legislation is becoming increasingly complex and demands a set of technical skills that few parliamentarians possess, much of the inattention to legislative matters is due to Parliament's own predilections and incentive structures. Parliament is becoming a less effective voice on fiscal management, the economy, social policy and the terms by which India is integrating into the global economy because of self-abdication and not because of uncontrollable exogenous factors.

However, insofar as structural changes in Indian politics have led to an adverse self-selection regarding who enters politics, and thereby the calibre of people likely to enter Parliament, it is not possible to be too optimistic about the capacity of Parliament to rejuvenate itself. More important than changes in the professional background of MPs is the reality that those charged with making laws are sometimes lawbreakers themselves. Recently, India's Supreme Court passed a judgement making it mandatory for candidates contesting parliamentary or assembly polls to disclose their criminal antecedents to the electorate (if any) and information related to their personal finances and education.[24] Parliament tried to evade the judgement by an amendment to the Constitution, which was challenged in the courts and finally struck down in 2003. The judgement attests the degree to which a hobbled legislative has ceded ground not to the executive or external forces, but to the judiciary. Whether the electorate will use the additional information on candidates' backgrounds to better screen their representatives is by no means obvious, but ultimately it is a task that will have to be faced by the Indian voter.

B.R. Ambedkar, generally acknowledged to be the father of the Indian Constitution, had warned the Constituent Assembly:

> I feel, however, good a Constitution may be, it is sure to turn out bad because those who are called to work, happen to be a bad lot...The working of the Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organs of state such as the Legislature, the Executive and the Judiciary. The factors on which the working of those organs of the state depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics. Who can say how the people of India and their parties will behave?

And in that observation lies the future of India's Parliament.

[24] All candidates are now be required to furnish information on their conviction/acquittal/discharge of any criminal offence in the past (if any) and whether the punishment was imprisonment or a fine as well as whether, in the six months before nominations were filed, the candidate was accused in any pending case or of any offence punishable with imprisonment for two years or more. Furthermore, candidates are required to furnish personal financial information on their assets and those of their spouse and dependents; liabilities, particularly any non-payments to any public financial institutions; and their educational qualifications.

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