

A PARLIAMENTARY DEMOCRACY OR AN EXECUTIVE DEMOCRACY

Relevant for: Indian Polity | Topic: Parliament - structure, functioning, conduct of business, powers & privileges and issues arising out of these

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“The growing irrelevance of Parliament is not because of individual actions but a matter of constitutional design’ | Photo Credit: ANI

Last week, a new Parliament building was inaugurated with both fanfare and controversy. In particular, the exclusion of the President of India — the formal head of the executive — from the inauguration, and the symbolism around the Sengol — a sceptre originally used to signify the transfer of power between Chola rulers — generated significant debate. Submerged beneath this debate, however, is an overlooked fact: the increasing subordination of the “Parliament” in India’s “parliamentary democracy.”

Parts of this story are familiar: we know that Bills are passed with minimal or no deliberation. We know that Parliament sits for fewer and fewer days in a year, and parliamentary sessions are often adjourned. We know that presidential ordinances have become a parallel if not dominant form of law-making.

It is tempting to attribute all of this to unscrupulous or callous politicians. What that misses, however, is the understanding that the growing irrelevance of Parliament is not because of individual actions but a matter of constitutional design. In other words, the Indian Constitution, by its very structure, facilitates and enables the marginalisation of Parliament, and the concentration of power within a dominant executive.

How does this happen? Consider the various safeguards that parliamentary democracies generally tend to put in place against executive dominance or abuse. First, in order to enact its agenda, the executive must command a majority in Parliament. This opens up the space for intra-party dissent, and an important role for ruling party parliamentarians — who are not members of the cabinet — to exercise a check over the executive. Occasionally, ruling party backbenchers can even join forces with the Opposition to defeat unpopular Bills (as was the case with various Brexit deals in the U.K. House of Commons between 2017 and 2019). Second, the Opposition itself is granted certain rights in Parliament, and certain limited control over parliamentary proceedings, in order to publicly hold the executive to account. Third, the interests of Parliament against the executive are meant to be represented by the Speaker, a neutral and independent authority. And fourth, certain parliamentary democracies embrace bicameralism: i.e., a second “Upper House” that acts as a revising chamber, where interests

other than those of the brute majority are represented (in our case, that is the Rajya Sabha, acting as a council of states).

When these features function as they should, it becomes very difficult for the executive to ride roughshod over Parliament and, in turn, opens up space for Parliament to act as the deliberative and representative body that it is meant to be.

In India, however, each of these features has been diluted or erased over the years.

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First, the possibility of intra-party dissent within Parliament has been stamped out by virtue of the Tenth Schedule to the Constitution, popularly known as the “anti-defection law”. Introduced through a constitutional amendment in 1985, the Tenth Schedule penalises disobedience of the party whip with disqualification from the House altogether. Ironically, as recent events have more than amply demonstrated, the Tenth Schedule has failed to fulfil the purpose for which it was enacted, i.e., to curb horse-trading and unprincipled floor-crossing. What it has done, however, is to strengthen the hand of the party leadership — which, in the case of the ruling party, is effectively the cabinet/executive — against its own parliamentarians. Intra-party dissent is far more difficult when the price is disqualification from Parliament.

Second, right from its inception, the Indian Constitution did not carve out any specific space for the political Opposition in the House. There is no equivalent, for example, of Prime Minister’s questions, where the Prime Minister has to face direct questioning of their record from the Leader of the Opposition as well as by other politicians. In other words, the manner of proceedings in Parliament are under the complete control of the executive, with no real constitutional checks upon how that control is exercised.

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Third, this is exacerbated by the fact that the Speaker, in our system, is not independent. The Speaker is not required to give up membership of their political party, and is not constitutionally obligated to act impartially. This has led to an increasing trend, at both the central and the State levels, of Speakers acting in a blatantly partisan manner in order to advance the interests of the executive over the interests of the House. Not only does this affect the quality of the deliberations in the lower house (as the Speaker has control over the conduct of the House) but it also has a knock-on effect on the Upper House: as has been seen of late, when the ruling party wishes to avoid effective scrutiny in the Rajya Sabha over Bills, the Speaker simply classifies the Bill as a “money bill”, thus depriving the Rajya Sabha of the right to make amendments. This was seen most vividly in the case of the Aadhaar Act, where Rajya Sabha scrutiny was avoided in this precise manner, and many important, rights-protecting amendments could not be passed.

Fourth, the role of the Upper House is undercut not only by the Speaker’s misclassification of Bills but also by the constitutionally-sanctioned ordinance making power. An ordinance is nothing more than executive legislation; and while, in theory, it is meant to be used only for an emergency, while Parliament is not in session, in practice, it is used as a parallel process of law-making, especially when the executive wants to bypass the Upper House altogether, at least for a period of time, and create a fait accompli.

When we put all of this together, what emerges is a picture where the only effective check upon the executive is one where the electorate has thrown up a fractured mandate and the ruling

party is forced to govern in a coalition with allies with whom it does not always see eye-to-eye. In such a scenario, coalition partners can exercise something of a check upon the executive in Parliament.

However, when there is a single, majority ruling party, whether at the Centre or in the States, there is very little that Parliament can do. The anti-defection law wipes out intra-party dissent. The political Opposition's scope for participation depends upon the discretion of the executive. Partisan Speakers further ensure that the executive is insulated from public embarrassment at the hands of the Opposition, by controlling the debate. And the Upper House is taken out of the equation, either by the misclassification of money Bills or by the use of ordinance power.

It is no wonder, then, that the quality of parliamentary deliberations has declined: it is simply a mirror of Parliament's own structural marginalisation under the Constitution. Instead, what we have is greater and greater executive power: a situation that resembles presidential systems with strong executives, but without the checks and balances and veto points that those systems have; in effect, the worst of all worlds.

Therefore, even as the new Parliament is inaugurated, the urgent question that we must ask is whether in formal terms, India can continue to be called a parliamentary democracy, or whether we have gradually morphed into an executive democracy. And if, indeed, we want to return to parliamentarianism, what manner of constitutional changes and reforms that it would require.

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