

Need to save our legislatures against themselves

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Abstract

Discipline and decorum and dignity of parliament are of paramount importance for the efficient functioning and success of parliamentary institutions. All over the world concerns have been expressed about the decline of discipline, decorum and dignity of legislature bodies seen in the context of the evolution of democracy these problems are understood as aberrations. Success, effectiveness and prestige of any institutions rests on its orderly functioning and the extent to which it adheres to standards of discipline, dignity and decorum for discharging its activities. This is particularly so of the parliamentary institutions which embody the will of the people and constitute the form of democracy to carry out among other activities the principle task of legislation and spurning of executive.

Erosion of discipline and decorum will lead to the erosion of the parliamentary institutions. These fundamental norms of respective bodies have always been considered sacrosanct and are therefore preserved, protected and defended. Recently unfortunate scenes, we observed in legislative bodies.

This paper explains the need to save our legislatures against themselves.

Keywords: Parliamentary Culture, Deliberation, Constitutional Obligations, House of Commons, Question Hour, Sovereign Rights

Introduction

The unruly scenes in the state Legislative Assemblies in India are a sad reminder of the fast deteriorating standards of parliamentary behavior in the world's largest democracy. Once described by Professor Galbraith as a 'functioning anarchy', India's democracy has since become less functional and more anarchical.

Today more than ever before, we are convinced that parliamentary structures, unsupported by corresponding inputs of parliamentary culture and ethos are bound to give way sooner or later. It is common knowledge that even with the best of traditions, legislatures everywhere have declined. Their control over the executive has become more formal than real. Even the function of deliberation and debate for which they are eminently suited has been marginalized. The crucial question therefore, is not whether we can strengthen our legislatures but whether we can save them. Our legislatures have to be protected not only against irresponsible executives but even more so, against themselves.

Reasons for Decline

Historically, legislatures symbolized people's struggle against arbitrary rulers and authoritarian regimes. Even after the battle for constitutional government was won, the executive was looked upon with distrust. The legislature therefore became the much needed control mechanism to discipline the executive and to make it accountable. Gradually the distrust was transformed into trust and confidence in the executive, especially in parliamentary systems. With this new found trust, the cabinet which was originally viewed as a committee of the legislature has begun to lord over the parent body, making it less and less significant. The circle is thus complete.

A legislature seeking to control the executive becomes a captive of its own creation.

Indian Experience

Prime ministers with the exception of Pandit Nehru have been less than fair to the parliament and opposition in the discharge of their constitutional obligations. The occasions when the prime minister is present in the House are becoming rare. Prime minister Mrs. Gandhi made use of her steam-roller majorities in parliament to push through the 24th, 25th and 26th constitutional amendments - all at one go in 1971 - ostensibly with a view to vindicating the supremacy of the parliament but in practice, to emphasise executive fiat and make it unchallenged. The same design is seen even more glaringly in the passing of the 38th, 40th, 41st, and 42nd amendments. Thus it would seem that while parliament can be redeemed from judicial over-jelousness, there is no redemption from executive despotism.

The House of Commons is acclaimed as the 'finest club in the world'. The Lok Sabha is not even a proper replica of the 'talking shop' that it is supposed to be at the minimum. Parliamentary debates have deteriorated to the rock bottom. There is scant regard for decency propriety, and dignity of the House, still less of the members. Gone were the days when stalwarts like Shyama Prasad Mookerjee regaled and rejuvenated the House with their wit and wisdom. When Dr. Mookerjee took on the government against the preventive detention bill, someone from the Treasury benches shouted: 'Face the truth'; came the reply, "How can I, for I face the Treasury benches". Today the Treasury and the opposition benches face each other with red eyes and closed fists, in other words, unabashedly exhibiting either lung power or muscle power or both.

Like all else, the image of the Speaker, a key figure in parliamentary business, is fast declining. In England, the convention is 'once a Speaker, always a Speaker'. In India Speakers have been known not merely to retain their party affiliations but also wait for opportunities to reenter politics and even accept ministerial berths. Speakers of state Assemblies have been known to whet their ambitions and manipulate to become chief ministers. What will be the fate of the House whose presiding officer functions with real or apparent political clout?

If attendance of members is an indication of the efficiency of the House, absenteeism has become a vexed problem with our legislatures. The Question Hour attracts better attendance in the Lok Sabha partly because it is now being telecast and partly because it provides an opportunity to question the ministers. But during regular business sessions, the attendance is often so poor that parties are forced to issue whips whenever a division is anticipated.

The issue of parliamentary privileges has often landed our legislatures in deep controversies. At times it has led to confrontations between the legislature and the press on one hand and the judiciary on the other. The sovereign rights of the legislature and the unwritten privileges of the legislators have to be reconciled with the guaranteed rights of the citizen and with the rule of law. On the other hand, if the legislature regards its privileges as sacrosanct, the press asserts its freedom as unassailable, and the judiciary considers its power of judicial review as unimpeachable, there will be no end to controversies. The recent stance adopted by the Speaker of the Manipur Assembly vis-a-vis the Supreme court is a case in point. In many the speakers are not properly implement the anti defection Act, for Example. Recent defection in Andhra Pradesh and Telangana States.

Thus the working of our parliament, indeed, our parliamentary democracy is quite disheartening. Worse still are our state assemblies which suffer from a double jeopardy. They exhibit less the virtues of the country's parliament and more its vices and weaknesses. On top of all, they have to face not merely the onslaught of their own political executives but also the sword of Democles ever wielded by the central executive through the instrumentality of the Governor who is the constitutional head of the state government but whose accountability is clearly to the Centre.

The efficiency of our parliamentary institutions will thus appear to be inversely proportional to the mounting expenditure incurred on them. A general election to the Lok Sabha will now cost more than a thousand crores which means on an average of fifty crores for every

M.P to be elected. Similarly, nearly half that amount, if not more, will be spent on the election of each M.L.A.

The present situation is ideal for an authoritarian party and its unscrupulous leadership to suspend parliament, do away with democracy and establish their own concept of 'good government' in place of a thoroughly discredited concept of 'self-government'. This is the remedy that dictators of all hues have always suggested. This was the plea taken for imposing the emergency regime in the seventies. But the remedy is worse than the ailment which it seeks to cure.

The question therefore arises: can there be a more appropriate remedy and a more enduring cure? By all accounts, it should be borne in mind that there can be no magic cures for chronic

ailments. Further, structural remedies are generally found to be unsuitable for dealing with behavioural and attitudinal infirmities. We should, therefore, be cautious in suggesting legal remedies or structural changes. For instance, disappointment with the parliamentary system might induce some of us to suggest a change over to the Presidential system or some other curious combination of parliamentary and presidential systems. As it often happens - a known devil is better than an unknown angel - there is no guarantee that new structures will bring renewed hope and not a heightened sense of despair. It is, therefore, safer to build on existing structures by plugging loopholes where necessary and working harder in the direction of climatic changes so as to promote the norms and ethos of parliamentary democracy rather than merely the formalities.

Agenda for Reform

We may offer some suggestions for reform so that there may be a nationwide debate on the same and a healthy may emerge. 1. Representation is of the essence of democracy. The present system of representation based on the 'first past the post' principle has contributed to the growth of strong national parties in the U.K. But in India, it has directly or indirectly led to one party dominant system or no party dominance in the midst of a plethora of parties and factions. In this context, it is worthwhile examining the feasibility of a combination of the present system and proportional representation in that 50 p.c of seats in our legislatures may be filled through direct election as at present and the remaining 50 p.c of seats may be filled by the List system of P.R in accordance with the popular vote of parties in the direct election.

2. To tone up the quality of our legislatures, we need strengthen the qualifications of our legislators. The constitution has a permissive provision under 84, c1.5 which empowers parliament to prescribe qualifications other than the requirement of citizenship and age. This provision could be made use of to prescribe, among other things, a minimum educational qualification and also maximum age limit. Experience of public service in any given profession, occupation, or calling should also be considered for the assessment of the same. To begin with, experience of public service should be insisted upon for all independent candidates.

3. The contingent of nominated members to the Rajya Sabha should be increased from 12 to 25 in accordance with the original proposal considered by the Constituent Assembly. These 25 members were to be chosen from 5 panels of distinguished citizens. The empanelling should take place on a continuous basis in accordance with agreed norms. Retired Service Chiefs, judges of the Supreme Court, professors Emeritus, and other professionals of eminence and distinguished service should be recommended for empanelment. In any event, nominations should not become a lever for the exercise of political patronage by the ruling party.

4. The Speaker with the new portfolio of powers given to him by the anti-defection law has often found himself in the midst of a bitter controversy and criticism. Either we ensure that the office of the Speaker is absolutely nonpartisan by adopting the salutary British convention which prescribes the norm, 'once a Speaker, always a Speaker' or we free the Speaker from the sole responsibility to decide on disputes arising from the anti-defection law. By a suitable amendment of this law, all

disputes relating to disqualification should be adjudicated by a Board chaired by the Speaker, Leader of opposition, Chief Election Commissioner and the Attorney General of India could be members of the Board whose decision should be final.

5. Misuse of Art. 356 have dealt a severe blow to our democratic institutions. The Governor who is often blamed for the misuse of Art. 356 is merely a scapegoat. He is subjected to the double jeopardy of being ordered about both by the state government and the Union Home ministry. For reasons of political survival, alternately ambition, Governors with rare exceptions, have become pliable to Central directions. Thus the reason for misuse of Art. 356 has to be found in the misuse of the office of the Governor. It is common knowledge that the Centre, irrespective of the party in power, has always treated the office of the Governor as an extended arm of the Home ministry. The solution to the problem, therefore, lies not in scrapping Art. 356 nor in doing away with the institution of the Governor but in finding out adequate safeguards against misuse of the office or power as the case may be. The suggestion made by justice Krishna Aiyer that every proclamation of emergency under Art. 356 should be approved by parliament by a two-thirds majority vote before it is issued, is worthy of trial.

6. It is heartening to note that parliament will now work through committees, specially in reference to the budget. The states too should be persuaded to adopt the committee system.

7. Parliamentary privileges is another issue which has often pushed our legislatures into adversarial relationship with the press on the one hand and the judiciary on the other. Will codification of privileges provide the answer? perhaps not; codification will lead to endless legal hair-splitting on the nature and scope of privileges and will thus undermine the position of the legislature, instead of safeguarding it. The only way is to develop proper conventions, for unlike a code, a convention is validated by universal acceptance. Conventions can put an end to controversies more effectively than the best of codes. They can transform adversarial relationships into cooperative relationships.

Indeed, healthy conventions are of the essence of parliamentary democracy. Where a polity is based on mutual trust among the principal organs of the government, conventions can provide the necessary checks and balances. Pretty frequent constitutional amendments can undermine the very trust on which our parliamentary polity rests and thus aggravate mistrust and friction among the different limbs of government. Our constitution may not provide the best blueprint of a parliamentary democracy but if it fails, as Dr. Ambedkar poignantly remarked half a century ago, it is not that the constitution is bad but that man is vile.

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