

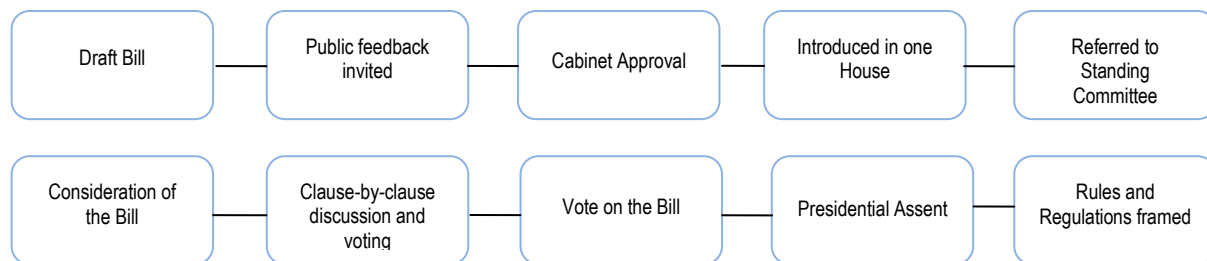
Parliament as a Law Making Body

Background Note for the Conference on Effective Legislatures

Parliament performs several essential functions including that of making laws, scrutinising and passing the budget, conducting oversight on the activities of the government and representing citizens. As a law making body, Parliament is tasked with examining legislation and passing it after scrutiny and debate. This note presents an analysis of the role of Parliament as a law making body, and ways to strengthen the same.

Legislative process in Parliament

The process of the passage of a Bill includes several stages. This section presents an overview of the legislative process in Parliament.



Pre Legislative Consultation

When a Bill is in its draft stage, it may be placed in the public domain for stakeholder feedback. Over the years, a few draft Bills have been published for stakeholder information and feedback. Recently, draft Bills pertaining to Juvenile Justice and amendments to the Factories Act, 1948 were placed in the public domain.

Earlier this year, the central government introduced a policy on pre legislative consultation to be followed by every Ministry before submitting a legislative proposal (including subordinate legislation) to the Cabinet.¹ The policy mandates that a draft Bill be placed in the public domain for 30 days. It is to include a justification for its introduction, financial implications, estimated impact assessment and an explanatory note for key legal provisions. A summary of comments received is to be made available on the relevant Ministry's website. The draft Bill is then sent for Cabinet approval.

Introduction of a Bill in the House

Once the draft Bill is approved by the Cabinet, it may be introduced in either House of Parliament. The relevant Minister may move a motion for formal leave to introduce a Bill. Ordinary Bills and Constitution Amendment Bills may originate in either House. However, Money Bills, and other financial Bills, may be introduced only in the Lok Sabha. Ministers introduce Bills in Parliament on behalf of the government. Individual MPs can also introduce Bills in Parliament as Private Members' Bills.

At the time of introduction of a Bill in Parliament, called the **First Reading**, MPs can raise objections. The introduction of a Bill may be challenged on grounds that Parliament lacks legislative competence to enact the law, or that it violates the Constitution. For example, the Prevention of Communal Violence Bill, 2013 was challenged on grounds of legislative competence, and the Minister decided not to introduce the Bill. The Civil Liability for Nuclear Damage Bill, 2010 was opposed on grounds of violation of the Constitution. However, the motion to introduce the Bill was adopted.

Reference to the Standing Committee

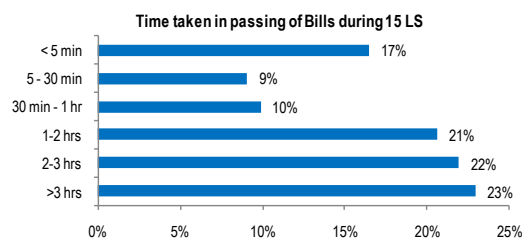
Once a Bill is introduced in Parliament, it may be referred to a Department Related Standing Committee (DRSC) for detailed examination. However, it is not mandatory to refer a Bill to a Committee. In the 15th Lok Sabha, about 70% of Bills introduced were referred to Standing Committees. The House may also form a Select

Committee to examine a particular Bill. The Commercial Division of High Courts Bill, 2009 and more recently, the Insurance Laws (Amendment) Bill, 2008 were referred to Select Committees of Rajya Sabha.

Consideration and passing of a Bill in both Houses of Parliament

Second Reading: Once the Committee has submitted its report to the House, the Bill is taken up for discussion. When a motion for consideration of a Bill is made, there is a general discussion on the principles of the Bill. The Bill is then taken into consideration with a clause by clause reading. At this stage, MPs can move amendments to the Bill.

In the 15th Lok Sabha, 35% of the total Bills passed were debated for an hour or less. These include Bills with significant implications, such as the Protection of Women from Sexual Harassment at the Work Place Bill, 2011 which was passed in 2012 by the Lok Sabha in 20 minutes.



Third Reading and Voting: After a consideration of the Bill, the Minister may then move that it be passed. At this stage, the debate is restricted to arguments either in support or against the Bill, and then the Bill is put to vote. Once the Bill is passed in the first House, it is sent to the other House for consideration and passing.

Presidential assent: The final stage includes the Bill being presented to the President for his assent. Following Presidential assent, the Bill becomes an Act.

Parliamentary scrutiny over delegated legislation

When Parliament passes a law, the framing of rules and regulations that enable the implementation of the Act are delegated to the executive. Most Acts require such delegated legislation to be tabled in Parliament, and Parliament may amend or repeal the delegated legislation.

Strengthening the legislative process within Parliament

The role of Parliament may be strengthened by reforming the current institutional mechanisms. Given that the Indian Parliament follows the Westminster Model, there may be lessons from an examination of the processes established in other Commonwealth countries, especially the UK.

Institutionalising the pre legislative scrutiny process

Public scrutiny of draft Bills: The government's pre legislative consultation policy has not been implemented in a uniform manner. For example, the Delhi Special Police Establishment (Amendment) Bill, 2014 that was passed in the current winter session was not placed in the public domain at the draft stage. A draft of the Assisted Reproductive Technology (Regulation) Bill, 2014 that has been listed for introduction in the current winter session is not available in the public domain, as of now.

The pre legislative consultation policy also provides for a 30 day window for stakeholder comments.¹ However, recently, the Health Ministry provided 10 days for submitting comments on the draft amendments to the Medical Termination of Pregnancy Act, 1971. If practices around public consultations on draft Bills are implemented in a uniform manner it would aid in effective implementation of the policy. In the UK, every draft Bill and its Explanatory Notes are made publicly available for pre legislative scrutiny.²

Parliamentary scrutiny of draft Bills: Currently, draft Bills are not examined by Parliament or its Standing Committees. Such scrutiny at the draft stage would increase the efficiency of Parliament, as it is easier to modify a draft Bill before its formal introduction in Parliament. In the UK, most Bills are examined by Parliamentary Committees, before their introduction in Parliament.³

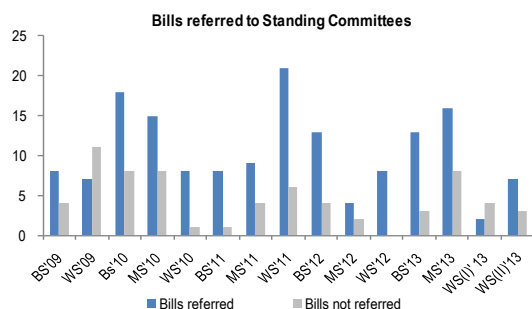
Debate and passage of a Bill

Explanatory Note on a Bill: Typically, every Bill is accompanied by a brief Statement of Objects and Reasons (SoR) and short Notes on Clauses. In the UK, every draft Bill contains an Explanatory Note. This includes detailed background information on the development of policy in that subject area, the effects of the draft Bill on existing legislation in that field and other implications. It also contains detailed commentary on clauses of a Bill.⁴

It would be useful to include such an Explanatory Note that elaborates on the government's reasons for introducing the Bill, and the implications that it may have. This would also raise the quality of discussion on the proposed Bill on the floor of the House. For example, the draft Indian Financial Code drafted by the Financial

Sector Reforms Commission (2013) is accompanied by a 200 page report that provides an analysis of the current financial sector and makes recommendations for reform.⁵

Detailed Financial Memorandums: While every Bill that involves expenditure is accompanied by a financial memorandum, there are occasions when it does not provide estimates of expenditure. For example, the Rights of Persons with Disabilities Bill, 2014 states that “there is no easy way of estimating the full financial burden likely to be incurred”. Including details of expenditure and financial requirements would ensure that the merits of the Bill and its financial implications may be assessed in a more thorough manner by Parliament.



Reference to a Committee: It is not obligatory to refer a Bill to a Committee, before its consideration and passing. The relevant Minister may move that the Bill be taken into consideration at once. In the UK, every Bill is referred to a Committee for clause by clause consideration.⁶

Referring every Bill to a Standing Committee would provide for more in depth discussion and debate on it, than is possible on the floor of the House. It would also enable MPs to build consensus across party lines and allow for discussions with independent experts and stakeholders.

Discussion on recommendations of the Committee Report: Once the report of the Committee is submitted to the House, it is not mandatory to have a discussion on its recommendations. Further, ministers are not required to state reasons for rejecting the Committee’s recommendations. The reports of the Committee allow for a more informed debate and increase the efficiency and expertise of Parliament, and must be discussed by both Houses.

In the UK, every Committee report is discussed in the House. At this stage, known as the *Report Stage*, the Speaker usually selects certain new clauses or amendments suggested in the report, for discussion. It is only after the House has considered the Bill on the report, that it is read a third time and passed.⁷

Strengthening the committee system

Research support for Committee members: At present, the technical support available to parliamentary committees is very limited and only includes a secretariat that enables scheduling of meetings, note-taking etc. Committee members deal with complex, technical issues across a variety of subjects. The examination of Bills also often requires interpretation of legal nuances. In order to perform their role on the Committee more effectively, members require dedicated full time, high quality, and broad based research support. For example, the Scrutiny Unit, in the UK Committee Office, provides specialist expertise to Select Committees on financial matters and draft Bills. The Unit consists of 14 staff members who include lawyers, accountants, an economist and a statistician, House of Commons Clerks and a small team of administrative staff.⁸

Separate Standing Committees for each House: Parliament was designed as a bi cameral legislature, to enable the Rajya Sabha to act as a body of review over the Lok Sabha. However, under the current Parliamentary Committee system, members of both Houses sit together on the Standing Committees to scrutinise a Bill. This is at variance with practice in the UK where a Bill is scrutinised by a House of Commons Committee and a House of Lords Committee.⁹ Allowing for separate Committees of each House to examine a Bill provides for a more independent review process. In India, this practice is seen in cases where a Select Committee is set up by one House to review a Bill after it has been passed by the other House; however, it is not a common practice.

Review of subordinate legislation

Parliament may review rules and regulations framed under an Act to examine whether the power delegated by Parliament to the government is being properly exercised. Each House has a Standing Committee on Subordinate Legislation to perform this function. However, the effectiveness of this process may be questioned. Between 2009- 2014, the Lok Sabha Committee on Subordinate Legislation examined 51 rules and regulations.

Second, it would be useful to re examine the current practice of a separate committee to review subordinate legislation. Since the Department Related Standing Committee that has examined the parent Act has the relevant subject expertise and context, it may be more efficient and effective if it were to review the rules and regulations formulated under the law. For example, the Standing Committee on Science and Technology had examined the Civil Liability for Nuclear Damage Bill, 2010. It would have been useful if the same Committee had also reviewed the Rules that were framed under the Act and notified in 2011.

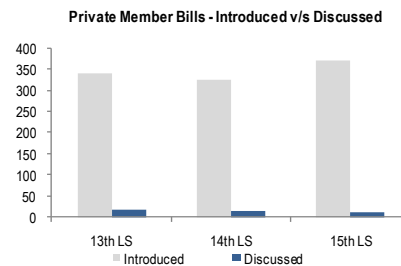
Further, Parliament has a standard process to amend any rule made under delegated legislation. After the rules have been tabled, MPs may move a statutory motion seeking an annulment or modification of the rules. For

example, in 2012, several MPs had moved a motion to negative the Rules to the Information Technology Act, 2000 and the Civil Liability for Nuclear Damage Act, 2010. However, this procedure is not used frequently, and such a motion was moved thrice in Rajya Sabha and once in Lok Sabha during the period of the 15th Lok Sabha.

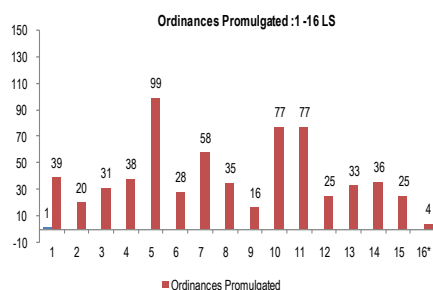
Private Members' Bills

Private Members' Bills enables MPs to highlight legislative gaps, draw attention to matters of national concern, and to represent public opinion in the House. However, since the government agenda tends to dominate the legislative business in a parliamentary system of government, private members' business does not get much time in Parliament's legislative agenda. Till date, only 14 Private Members' Bills have been passed, and no Bill has been passed since 1970.

Currently, as the graph on the right indicates, most Private Members' Bills do not even get debated in Parliament. This can be addressed by providing more time for discussing private member business in the House.



Promulgation of Ordinances



The Constitution permits the President to promulgate ordinances when Parliament is not in session, and where 'immediate action' is warranted. But past practice shows that the government has issued Ordinances when a similar Bill was pending in Parliament, including the Criminal Laws (Amendment) Ordinance, 2012 and the National Food Security Ordinance, 2013. The government has also re-promulgated ordinances because it was not passed by Parliament. For example, the Indian Medical Council (Amendment) Ordinance has been re-promulgated multiple times.

The Supreme Court has held that the power to promulgate an Ordinance is essentially a power to be used to meet an extraordinary situation.¹⁰ The frequency with which Ordinances are issued – an average of six per year in the last decade – raises the issue of whether an "extraordinary situation" was present at each such instance. This begs the question of whether promulgation of ordinances by the executive may be seen as a violation of separation of powers between the executive and the legislature. Perhaps, it is time to revisit the provision in the Constitution that permits Ordinances to be issued.

It is noteworthy that most democracies including the United Kingdom, the United States of America, Australia and Canada do not give the executive such powers to issue Ordinances. In cases of any urgent situation that requires the passing of a new law, they summon an emergency session of the legislature.

1. Committee of Secretaries, Law Department, Ministry of Law and Justice, <http://lawmin.nic.in/ld/plcp.pdf>.

2. Pre-legislative scrutiny, Commons Library Standard Note, <http://www.parliament.uk/briefing-papers/SN02822/prelegislative-scrutiny>.

3. Draft Bills, UK Parliament, <http://www.parliament.uk/about/how/laws/draft/>.

4. For example, see the Explanatory Notes to the Draft Protection of Charities Bill, (2014), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/365710/43820_Cm_8954_web_accessible_Draft_protection_of_charities_bill.pdf.

5. Report of the Financial Sector Legislative Reforms Commission, Vol. 1, Analysis and Recommendations, March 2013, http://finmin.nic.in/fslrc/fslrc_report_vol1.pdf.

6. Committee Stage (Commons), <http://www.parliament.uk/about/how/laws/passage-bill/commons/coms-commons-committee-stage/>.

7. Report Stage (Commons), <http://www.parliament.uk/about/how/laws/passage-bill/commons/coms-commons-report-stage/>.

8. Scrutiny Unit, UK Select Committees, <http://www.parliament.uk/mps-lords-and-offices/offices/commons/scrutinyunit/>.

9. General Committees, <http://www.parliament.uk/about/how/committees/general/>.

10. D.C. Wadhwa vs. State of Bihar, 1987 SCR (1) 798.

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