



Supremacy Of Indian Parliament In Modern Democracy And Public Opinion: Ethical Conflict In Law Making Process.

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ABSTRACT

The Parliament is an institution that is profoundly responsible for carrying forward the ethos and aspirations of the people in the Parliamentary democracy. The Parliament is the central institution, which is responsible for framing and executing the policies of public welfare, with the aid of other equally important democratic institutions like the Executive and the Judiciary. The Parliament in a democratic set up is formed of the representatives of the people, elected by them, generally on the basis of adult franchise and for a fixed term to serve. The Constitution of the nation generally assigns the Parliament a definite role to perform and requires it to carry out specific functions of public importance. The Principal Law of the nation also provides for the procedure in accordance with which the Parliament is supposed to perform its role.

Key words: Democracy, Parliament, Executive, Judiciary, Legislative

Introduction:

The Parliament is the central institution, which is responsible for framing and executing the policies of public welfare, with the aid of other equally important democratic institutions like the Executive and the Judiciary. The Constitution of the nation generally assigns the Parliament a definite role to perform and requires it to carry out specific functions of public importance. The Parliament in a democratic set up is formed of the representatives of the people, elected by them, generally on the basis of adult franchise and for a fixed term to serve. The Principal Law of the nation also provides for the procedure in accordance with which the Parliament is supposed to perform its role. The various functions of the Parliament as assigned by the Constitution includes, law making since it is a legislative organ of the State, administrative functions, financial planning of the State resources, foreign affairs, etc. All these powers and functions are exercised by the Parliament by discussing and deliberating these issues amongst the Members of the House and decisions thereupon are taken by a majority rule. The Parliament enjoys sufficient freedom in taking these decisions and the Parliamentary process as provided in the Constitution generally do not admit any restraint on the powers of the Parliament in this regard, especially from any element stranger to the Parliament.¹

Development of Parliamentary Practice and procedure:

The word Parliament is derived from the French word 'Parler' which means to speak and discuss. Parliament is a deliberative body. Its functions are multifarious which are divisible under the following heads: Legislation, Control of Public Finance, Deliberation and Discussion, Control of the Executive, Removal of Certain High Officials; and, The Constituent function.²

The Parliament has to perform various functions, which prominently include discussing the matters of governance, designing and developing policies for the better governance in democratic setup and enactment of Laws. The Parliament as an organ of democracy has a very important role to play in the maintenance of democratic values.

As the elected body that represents society in all its diversity, parliaments have a unique responsibility for reconciling the conflicting interests and expectations of different groups and communities through the

¹Pollard, A.F, The Evolution of Parliament, Meerut, Shalabh Publishing House, 2007.

²M.P.Jain, Indian Constitutional Law, p.61.

democratic means of dialogue and compromise. As the body entrusted with the oversight of government, they are responsible for ensuring that governments are fully accountable to the people.³

The Indian Parliament, in its present form, is the institution which comprises of the representatives of the people, elected by them to further the common goals set out in the Constitution of India. The Parliament, other than performing various functions assigned to it under the Constitutional provisions; is a principal legislative organ of the State.

The Parliamentary Process.

The legislation is one of the most important functions of the Parliament. The laws enacted by the Parliament have potential to exert tremendous influence on public life in India. The Parliament enjoys complete autonomy in regulating its own procedure.⁴ Since, people are direct beneficiaries of the laws enacted by the Parliament, it is necessary to examine, whether the present law making process gives due consideration to the public views or not.

Houses of Parliament have framed Rules of Procedure and Conduct of Business to be followed in the proceedings of the Parliament, owing to the power vested in the Parliament by the Constitution⁵ of India in this regard. These powers of course are to be exercised in consonance with the Constitutional provisions and it must be ensured that the rules framed by the Parliament do not violate provisions of the Constitution.⁶

Nature and Importance in Democracy in India:

The Founding Fathers of the Indian Constitution trusted their faith in the Parliamentary model of democratic governance. The diversity on various fronts and the vast size of the Nation provoked them to choose Parliamentary model over any other model of democratic governance. The framers of the Indian Constitution believed that Parliamentary system ensures the best possible opportunity for people to participate in the process of governance⁷.

The Democracy means government of the people, by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential.⁸

Democracy is essentially based on free debate and open discussion, for that is the only corrective of Government action in a democratic set up. In a participative democracy, the opinion of the people on a given issue, must be considered in the decision making process.

The Constitutional provisions, there are several legislative enactments which underline the importance of free and fair public opinion in democratic governance. The Right to Information Act of 2005, enacted by the Parliament recognizes the statutory right of the citizens to receive information of various matters related to their governance.

The Conflict with law an analysis :

The Indian Parliamentary model is derived or is based upon the Westminster Model of Parliamentary system in England. But, there is one fundamental difference between the English and the Indian Parliament.

The Parliament is supreme in the matters of legislation and the law enacted by the Parliament and also the process followed in enacting the law cannot be challenged as violating the provisions of unwritten Constitution of United Kingdom. 'Parliamentary sovereignty is a principle of the UK constitution.

Parliament is the supreme legal authority in the UK, which can create or end any law. Generally, the courts cannot overrule its legislation and no Parliament can pass laws that future Parliaments cannot change. Parliamentary sovereignty is the most important part of the UK constitution.⁹

The Constitutional provisions if are interpreted in restrictive and literal sense, the position which emerges is very clear; and it nowhere obliges the Parliament to consider public opinion in framing of laws. But, to what extent defying the Constitutional spirit and values; by not considering the public views in the process of legislation in the name of strict adherence to the letter of the Constitution; shall be allowed? The spirit of the democratic constitution lies in giving precedence to the people in the process of decision making.¹⁰

The House shall not be allowed to discard those recommendations without proper consideration and without going into the merits of the recommendations made. Adopting above said measures without compromising the Parliamentary autonomy is a very delicate task; but for public good and moreover in the interest of

³The draft guide on 'Parliament and Democracy in 21st Century' prepared by the Inter-Parliamentary Union convened at United Nations Headquarters, New York between 7th to 9th September 2005. www.ipu.org.

⁴Art.122 of the Constitution of India.

⁵Art.118 and 118A of the Constitution of India.

⁶Art.118 and 118A of the Constitution of India.

⁷Association for Democratic Reforms v. Union of India, AIR 2001 Del 126.

⁸ Justice PalokBasu, Law relating to protection of human rights, p.351

⁹<http://www.parliament.uk/about/how/sovereignty>

¹⁰Kashyap, Subhash C., Our Parliament, New Delhi, National Book Trust, 1989.

democratic spirit and values, if Parliament and its Members have to sacrifice a little bit of its autonomy, it won't result into any wrong

Conclusion:

Ethical conflict in law making between the Parliamentary supremacy and Public opinion can be thus resolved, by providing for consideration of public views on enactments, a part of Parliamentary ethics. If the present Parliamentary ethics are violated by accommodating any views from outside the Parliament due to the process in force, why not amend the procedure itself to the effect of removing this handicap.

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