

N. K. SINGH*

Improving Parliamentary Oversight**

Thank you, Dr. S. K. Rao, for this privilege which you have given me to come back to ASCI, perhaps for the third time that I recall. I have come here twice earlier and have had the pleasure of interacting with the participants. The college has only grown in strength and reputation. ASCI's fame as a centre of not only training but also as a centre of intellectual excellence is now increasingly recognized. Therefore, it gives me double pleasure to be able to come back to this institute as you continue your march towards achieving higher levels of intellectual excellence.

At the start, I must say that I am new to Parliament. I am about two years old as a Member of Parliament with four more years to go, and therefore lots to learn and unlearn. I thought it may be a good idea for me to share with you what I see as some very critical issues that face us. But, I believe, the time that we have spent in trying to resolve these issues is rather minimal. I want to use the forum of ASCI to begin a wider public debate on an issue which I have chosen to speak about, namely, the need to improve parliamentary oversight.

In public perception, unfortunately, Parliament as an institution has declined in esteem significantly. It has become synonymous with a body which is often reeling under fracas, is disorderly, where a lot of valuable time is lost in terms of behaviour that does not bring any credit to parliamentarians. Looking at some raw statistics, I found that in the last Lok Sabha, which was the 14th Lok Sabha, as much as 32 per cent of its time was lost due to disorderly behaviour. The 15th Lok Sabha has had a much better beginning. The 15th Rajya Sabha, which has just gone by, also had a much better beginning. And

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thank God for that. When the 14th Lok Sabha was there, and I was already in the Rajya Sabha in the last days of the 14th Lok Sabha, I was witness to the spectacle of 11 important pieces of legislation which were passed in the Rajya Sabha in 5 minutes flat! Now, that really did no credit because it was passed in the kind of din and noise, in a ruckus kind of a way, which is completely far away from whatever our Constitution makers had in mind and whatever we expected from our parliamentarians. I think we have made a good beginning now that the 15th Lok Sabha is stable; the Rajya Sabha has a repository of considerable talent on various issues. There is no dearth of people who are knowledgeable; there is no dearth of people who can speak credibly on many subjects. Therefore, looking at the facts, we are hopefully entering a phase in which political stability will lead to a greater engagement with what Parliament is designed for, namely, giving the executive an oversight that is fundamental to our Constitution.

I will dwell on some of the things where I believe that a huge amount of work still needs to be done; this is an area on which ASCI and other think tank institutions need to engage. The evolution of parliamentary oversight, as you know, has had a checkered history. It is embedded in the transformation of the United Kingdom Parliament from a mere meager consultative forum, summoned for business under procedures regulated by the sovereign, to a level where they could ask the Crown for an account of the monies collected from the people in the form of taxes. Legislative oversight of the executive has been a contentious issue since the earliest days in the late fourteenth century. The principle behind legislative oversight of the executive is to ensure that public policy is administered in accordance with the legislative intent. According to this principle, the legislative function does not cease with the passage of a bill. It is therefore only by monitoring the implementation process that members of the legislature uncover any defects and act to correct instances of mal-administration.

In a more contemporary context, the key to parliamentary oversight as a tool in monitoring government activities was underscored when the President of United States, Mr. Woodrow Wilson, wrote in 1885, "There is some scandal and discomfort, but infinite advantage in having every affair of administration subjected to the test of constant examination on the part of the assembly which represents the nation, quite as important as legislation is a vigilante of administration." The obligation of parliamentary oversight in modern times implies that there must be a set of objectives or standards against which these can be measured with a definite set of identifiable criteria in any new

political and economic context. The concept of parliamentary oversight contains many aspects, which include political, administrative, financial, ethical, legal and strategic elements. The functions of parliamentary oversight, which in some ways have been summed up by the Inter-Parliamentary Union in a publication on parliamentary oversight across over 88 countries, consists of four principal ingredients:

1. To detect and prevent abuse, arbitrary behaviour, or illegal and unconstitutional conduct on the part of government and public agencies. At the core of this function is the protection of the rights and liberties of citizens.
2. To hold the government to account in respect of how the taxpayers' money is used. It detects waste within the machinery of government and public agencies. Thus, it can improve the efficiency, economy and effectiveness of the government's operations.
3. To ensure that the policies announced by the government and authorized by Parliament are actually delivered. This function includes monitoring the achievements of goals set by legislation and the government's own programmes.
4. To improve the transparency of the government's operations and enhance public trust in the government, which itself is a precondition for effective public delivery.

Parliament is usually referred to as the legislative branch of government. John Locke's model of the separation of the powers of the executive, the legislature and the judiciary is guided by the basic philosophy that the purpose of legislation is to prescribe rules; and the power of execution and the executive are subordinate and accountable to the legislature. As the body that represents the people, Parliament is called upon to see to it that the administration of public policy reflects and meets the people's needs. Parliament is also called upon to ensure that the agreed policy is properly implemented and delivered to the citizens. This is the principal role, therefore, of parliamentary oversight.

Having said this, how is this model, this overall chapeau, applicable in the Indian context? When it comes to the Indian context, there are five key ways in which parliamentary oversight operates.

First and foremost, the Question Hour. Both the Lok Sabha and the Rajya Sabha, each day for the first five days when they meet, have one hour set

apart for a Question Hour in which some oral questions that members have asked are taken up, depending on the lottery. The ministers concerned answer the questions and can be subjected to a few supplementaries which are permitted. My own experience of the Question Hour has not been very positive. Unlike the Question Hour which I have seen in some other parliaments, there has been a tendency on the part of ministers and the executive, in our Parliament during the last 10 years or so, to increasingly not answer the oral question; instead, the minister says that a statement is laid on the table of the house. This, to some extent, is the disengagement of the minister from having understood the substantive issues. Though the questions from the members are intrusive enough, he gets away by giving an assurance. Increasingly, the quality of the answers given by ministers has declined very substantially in the last 10 years or so. Parliament itself, as an institution, to some extent has declined given the fact that it has been functioning in a disorderly fashion.

The second, more intrusive, ways of looking at parliamentary oversight are the permanent committees of Parliament. First and foremost is the Public Accounts Committee (PAC) of Parliament, of which I have the privilege of being a member. The PAC was constituted for the first time in 1921, following the Chelmsford-Montague Reforms. At that particular time, the Finance Minister was the Chairman of the Public Accounts Committee. This took various shapes and forms. In the more contemporary context, it was only in the late 1960s that it was decided that it must function as an adversarial committee. Therefore, the chairman of that committee is the person nominated by the mainstream opposition parties, with members of both houses of Parliament elected to the PAC for a period which is so defined as to be able to look into certain aspects of government accounting. I have faced the Public Accounts Committee as a recipient of questions. When I was in the Ministry of Finance, for seven-eight years I was in the witness box in the PAC. I am now a member of the Public Accounts Committee and therefore reading papers in a different role. Unfortunately, the PAC is almost entirely dependent on the audit reports which are prepared by the Comptroller and Auditor General of India (CAG) under the constitutional powers conferred on him. At best, it can be said that picking up episodic events of the past gives you some guide to what can happen in the future. But at the worst, it is nothing more than a post-mortem—in many cases, well after rigor mortis has set in. So, we have a situation where we pick out issues that are in the past and choose the CAG to drive this principal intrusive organ of public accounts

without delving into important areas of policy. The PAC steers clear of all policy issues, concentrating itself only on issues of how faithfully the government has carried out the appropriations for which it sought an authorization out of the Consolidated Fund of India. I believe that the one critical infirmity of the Public Accounts Committee is that it does not give an ex ante assessment but an ex post post-mortem, well after the events have any contemporary meaning or relevance.

The third important tool, the Estimates Committee of Parliament, also does not go into issues of policy which are of an ex ante nature. The Committee on Public Undertakings, the fourth tool of parliamentary oversight, does a similar exercise in respect of those public undertakings that fall outside the purview of the Public Accounts Committee.

Parliament then devised a system of standing committees to deepen the function of oversight. Currently, there are 24 standing committees of Parliament. I have the privilege of being, of my own choice, a member of the Standing Committee on Human Resource Development. The standing committees are designed to discuss not so much the policies of government—but have increasingly become a tool for vetting the legislation introduced by the government in either house of Parliament. I will give you an example. In the 14th Lok Sabha, a bill was introduced on the Right of Children to Free and Compulsory Education, from age 6 to 14. It was referred to the HRD Standing Committee where we looked into its legislative content. Now, see how infirm is the Standing Committee. We made far-reaching recommendations on the changes that should be made in the Right to Education Bill before it was to be placed on the table of the house. It was re-introduced with *zero* changes; all the recommendations of the Standing Committee on HRD were completely ignored, and the bill came back to the house in exactly the same form in which it had originally been introduced! The first infirmity of the standing committee is that it is a committee which is exclusively almost not preoccupied with the legislation introduced by the executive. What is worse, there is no binding character that the recommendations of the standing committee will, in any way, necessarily be reflected by the executive in an altered bill! As long as governments are in a majority, the bills will be passed in the way in which the executive really wants them to be passed. By the time the Right to Education Bill was re-introduced in its original form in the house, the Minister for Education had changed from Mr. Arjun Singh to Mr. Kapil Sibal, who did respond to some of the suggestions made. He said, “We will keep them in mind as and when

the rules are framed, as we go along.” But clearly, he was bound by the bill which he had introduced, and there was zero change from the original intent of the bill. The bill, of course, continues to have many, many serious infirmities, about which papers have been written, including by myself. This brings out the severe weakness of the standing committees’ role in being able to make the executive accountable; and therefore brings out a huge infirmity in terms of the quality of parliamentary oversight.

There are three other concerns on which I would like to focus attention. First, many of the functions of parliamentary oversight were designed in a period when India’s economy was still, very substantially, a planned economy. Post-1991, the changes that have been brought about in the Indian economy are not reflected in Parliament’s functioning and in terms of the coherence of the discussions which take place. Let me give only three principal examples of this. First and foremost, let us take the example of Telecom Regulatory Authority of India (TRAI). We had a big discussion in the Rajya Sabha holding Mr. A. Raja responsible for the loss of at least Rs. 15,000 crore because of the manner in which spectrum licences had been allocated. In his defence, Mr. Raja’s principal argument, to me and many others who participated, was that TRAI had given a particular model, which he had accepted. It is another matter that TRAI in the same recommendations had also said that the auction should be done in a manner in which there is a genuine market price discovery process. When we asked him what it meant, he quoted another part of TRAI’s recommendations in which the regulator had validated the course of action that the minister had adopted. TRAI has been constituted by an independent Act of Parliament. Therefore, to whom is the regulatory body accountable? If the recommendations of TRAI have a huge financial bearing on the Consolidated Fund of India (CFI), does it mean that Parliament has shut itself out from this huge change in the CFI by virtue of a legislation that it had enacted?

Let me give you another example. To whom, for instance, is the Central Electricity Regulatory Commission (CERC) accountable? It will fix tariff functions; it will undertake determination of principles of open access, of wheeling charges, to carry out the functions of the Electricity Act, 2003. But if there is a malfeasance in these functions, which Parliament discovers, to whom is CERC accountable? Not accountable perhaps to the CAG.

Let me give you yet another example. It is well known that Ben Bernanke or Alan Greenspan continuously had an engagement with the US Senate and

the US Congress. Now, would it be appropriate for any of the committees of Parliament to perhaps summon the principal financial regulator which we have, namely, the Reserve Bank of India, to have an interface? In what modality would the elected members of Parliament look at the new regulators (leaving aside RBI, which may be functioning under its own ethos)? Take SEBI, for instance. Would SEBI be accountable to anyone because it may have given recommendations that have a huge financial bearing? I can go on. The crucial point is that this is a feature of the post-1991 scenario where liberalization has resulted in the creation of independent regulators, by independent Acts of Parliament, who are not accountable to the elected legislatures and who are not accountable to the functions and purview of the CAG, which would then have brought them under the purview of the Public Accounts Committee.

My second principal worry is of a somewhat different kind. I was looking at the way in which we draw up our five-year plans. We are in the middle of the 11th Five-Year Plan. Soon, we will have a review of the 11th Plan. We will shortly begin the process of crafting the 12th Five-Year Plan. Parliament is shut out from discussing five-year plans in any *ex ante* sense of the term. The five-year plans are prepared by the Planning Commission; they are adopted by the National Development Council (NDC); and they are placed on the table of Parliament. Parliamentarians do not have the opportunity of giving their inputs and suggestions on formulating important plan issues, setting development priorities, determining sectoral considerations and taking forward economic reforms. Suppose that a particular five-year plan says that 6 per cent of the GDP will go towards education. Based on its recommendation, which is adopted by NDC, a huge part of the outgo from the future Consolidated Fund of India has been foreclosed without Parliament ever having had the opportunity to debate and decide that education should be given 5 per cent and not 6 per cent, and instead 4 per cent more should be given to agriculture. In the entire process of building regional plans, sectoral plans, medium-term plans and five-year plans, India is perhaps the only country where Parliament does not discuss the plans in any *ex ante* sense. An *ex post* discussion is of inconsequence because by then, everything is frozen in stone and it really amounts to giving advice after the whole deed has been done.

So the question is: how can we bring greater parliamentary engagement in the evolution of our planning process, planning strategy? Fortunately or unfortunately, the Planning Minister is the Prime Minister and the Deputy

Chairman of the Planning Commission is not a member of either house of Parliament. Even if he was in an individual capacity, that has no meaning. There are many consequences of this. I had, for instance, held a big discussion on poverty. The Chairman of the Rajya Sabha felt that issues such as who are the poor, what are the poverty numbers, what are poverty definitions, what are the methodologies implied were all important issues to be discussed, as did a lot of other people in Parliament, particularly in the context of the Food Security Act, which is likely to come up in the winter session. The reason perhaps this was not taken up in the last session of Parliament was because the subject of poverty belongs to no one; it perhaps belongs only to the Planning Commission; which means it belongs to the Prime Minister and then you would be subjecting the Prime Minister to a calling attention motion or an adjournment motion, which is perhaps against the accepted traditions of the house. Therefore, the consequence of not being able to discuss issues of planning in a serious way also denies us the opportunities to discuss very important subjects like poverty.

I have given the example of regulators. I have given the example of planning. Let me give you another example. The third important area of concern is that the budget-making process in this country is increasingly becoming opaque. Issues of health, of education, of social security and so on are issues that are typically contained in the appropriation part of the Union Budget when the Finance Minister presents the bill. Yet, it has never happened that one rupee out of the appropriations can be changed or altered without the government being defeated. And nobody will defeat the government because governments function on the basis of the fact that they are in power as long as they have the majority to enact bills, principally the money bills. With the result that the budgetary exercise also becomes, in a certain sense, an ex post exercise as far as the appropriation part of the budget is concerned. The principal function, the passage of the Appropriation Bill, is therefore a fait accompli with which Parliament has little prior engagement. When it comes to the Finance Bill, the other part of the Union Budget, no doubt the budget is subjected to discussions over three-four days; it goes to the Standing Committee and some nominal changes are introduced by the Finance Minister. But if you look at it in totality and try to benchmark India's budget transparency with OECD's benchmarks on budget transparencies, we fall short of international benchmarking in budget formulation, in budget design and in the engagement of the legislature in an ex ante sense of the term.

Therefore, governments have increasingly come to view Parliament as a mere rubber stamp for the legislation they are keen to enact. Most of the new independent regulators that have been created post-liberalization are outside the purview of Parliament. The design in the working of the standing committees preoccupy them in enacting or vetting legislation which have been introduced, such that policy issues in the forum for discussing policy issues, particularly cross-cutting issues that straddle more than one ministry, are sidelined. Take, for instance, the entire issue of infrastructure. What kind of overarching regulation do we need to have for infrastructure? There is no forum where Parliament can engage on this issue, no nodal ministry which is responsible. Take, for instance, the energy policy. Energy entails, at the moment, six-seven ministries—Coal, Power, Water Resources, Petroleum & Natural Gas, Atomic Energy, New & Renewable Energy. Which is therefore the organ of Parliament that is going to discuss one of the most critical issues of our time, namely, the need for an integrated energy policy? Parliament has no such forum.

The short point is this: we need to not only redesign the functions of parliamentary oversight in the context of the new ways in which the economic liberalization policy has altered the distribution of power between the executive and the legislature, by creating new entities which are outside the functions and purview of Parliament; but we also need to engage the legislatures more meaningfully on issues which are the burning issues and contemporary concerns of our time. If we do not do so, we will then allow the executive to remain increasingly unaccountable, particularly at a time when the principal opposition party seems to be in some amount of distress and disarray. That would, in my view, be a subversion of the constitutional obligation which is cast on Parliament to hold the executive accountable and thereby ensure that the will and intent of the people, who have given this mandate, is carried out in accordance with the basic letter and spirit of the Constitution.