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Review Article

## PARLIAMENTARY DEMOCRACY IN INDIA: LEGAL ISSUES AND CHALLENGES

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**Abstract.** *In this paper, we examine the parliamentary democracy in India. The Constitution makers adopted the British model of parliamentary democracy but democratic institutions had existed in many parts of ancient Vedic India. In this historical context, we explore the concepts of 'Sabha' and 'Samiti', the ancient institutions of representative democracy in India. Under the Constitution, the people of India exercise their sovereignty through Parliament at the central level and through State Legislatures in each State. The executive power is vested in the President, who is the highest dignitary in the realm, the symbol of the statehood, and the embodiment of the unity of the country. He represents the sovereign will of the nation and exercises his functions by acting on the advice and aid of the Council of Ministers. Different cases have been discussed regarding the judicial approach to parliamentary democracy, the concept of independence of the judiciary, and its power to amend the Constitution. After discussing the the parliamentary privileges and freedom of speech in Parliament, the author casts more light on the concepts of election and adult suffrage in India, and focuses on the role and position of the Speaker/Chairman in the House of People and respective State Legislatures. In the end, the author identifies specific problems observed in practice and discusses the challenges facing the Indian parliamentary democracy.*

**Key words:** *parliamentary democracy, democratic institutions, constitutional powers, India, judicial practice (case law), problems and challenges.*

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## 1. INTRODUCTION

“The dignity of the individual and the sacredness of human personality are the fundamental principle of democracy. The moral basis of a democratic society is respect for the individuals. The voice of the people must be carried by the Government and the parliamentary democracy is the best instrument for the ascertainment and the expression of the public mind. Parliament acts as liaison between the people and the State. It is the function of the Parliament to express, not to suppress, public opinion and social discontent, if any. A sound democracy requires freedom of thoughts and expression and this demands respect of minority opinion.”

Dr. S. Radhakrishnan (in: Morris-Jones, 1957)

“*We the People of India...*”<sup>1</sup>, the very first wordings of the Preamble of the Constitution of India clearly indicates that the people adopted the Constitution to ensure social, economic and political justice. The makers of the Constitution were not aware of the fact that they were making the world’s largest Constitution. The Constitutional Assembly believed that India already had the tradition of British system, which is better suited to our country’s conditions (Rao, 1961), and adopted the parliamentary form of democracy based on the Westminster Model for ensuring the political justice for the citizens. After obtaining independence, when the new Constitution of India came into effect on the 26<sup>th</sup> January 1950, India became for the first time in her long history, a full-fledged parliamentary democracy with the modern institutional framework (Pathak, 1971). Democracy is a concept, a political philosophy, an ideal practiced by the nation culturally advanced and politically mature, resorting to governance by representatives of the people elected directly or indirectly.<sup>2</sup>

Pursuant to the Indian Constitution, the very basis of the parliamentary democracy is the exercise of the power, which is based on the popular will and the popular control.<sup>3</sup> As a form of government, the envisaged form of democracy is a representative democracy (the representative democracy is also known as parliamentary democracy); therefore, in our Constitution, there are no agencies of direct control by the people, such as ‘a referendum’ or ‘an initiative’. The people of India have to exercise their sovereignty through Parliament at the central level and through Legislature in each State, which is to be elected on the adult franchise<sup>4</sup> and to which the real executive, the Council of Minister, shall be responsible. Though there shall be an elected President as the Head of the Union and a Governor nominated by the President as the Head of each State, neither of them exercise any political

<sup>1</sup> Preamble, the Constitution of India, 1950

<sup>2</sup> *Mohan Lal v. District Magistrate, Rai Bareilly*, AIR 1993 SC 2042.

<sup>3</sup> Article 75 (3) of the Constitution reads, “The Council of Ministers shall be collectively responsible to the House of the people”. Under article 75 (3) it is clearly provided that the Cabinet is responsible to the Legislature.

<sup>4</sup> The survival of this representative democracy and parliamentary Government in India for about six decades since independence should silence the critics, since military regime prevailed in the neighboring countries until recently. In 1981, the 1972 Constitution of Pakistan was supplanted by the Provisional Constitution Order (1981), under which Martial laws was imposed under Gen. Zia-ul-Haq as the Chief martial Law Administrator, who assumed power in 1977. It is only after Zia’s death in December 1988 that elections were held. But the future is not certain. Similarly, in Bangladesh, Martial Law was imposed since the assassination of Mujibar Rahaman and the assumption of military rule by Ziaur Rahaman in 1975 and later on by Lt. General Ershad until 1986, when the election was held and General Ershad was elected President. President Ershad handed over his power to a neutral Vice-Prime Minister in March 1991. In November 1994, Parliament was dissolved; in the new election, Mrs. Hasina Wazed was elected the new Prime Minister. Quoted in: Basu, 2013 (endnote 8)

function without the aid and advice of the Council of the Ministers,<sup>5</sup> which is collectively responsible to the people's representatives in the respective Legislatures (except for functions which the Governor is authorized under the Constitution to discharge at his discretion or on his own individual responsibility). The Constitution holds out equality to all citizens in the matters of choice of their representatives, who are to run the Governmental machinery. The envisaged tenets of parliamentary democracy are: (1) representation of the people, (2) responsible government, (3) accountability of the Council of Ministers to the legislature. The character and the content of parliamentary democracy ultimately depend on the quality of the persons who man the legislature as representatives of the people. The members of the legislature thus must owe their power directly or indirectly to the people.<sup>6</sup> The matters involving implementation of policies of government should be discussed by the elected representatives of the people. Debate, discussion and persuasion are, therefore, the means and essence of the democratic process.<sup>7</sup>

### **Nature of parliamentary democracy**

According to Abraham Lincoln, "Democracy is the Government of the people, by the people and for the people" (Malhotra, 2005). But there is also a concept of representation in this democracy because, due to mass population, it is very difficult to run government by involving everyone in the government. In Indian context, we have both types of representation: direct and indirect. In popular elections, people directly elect their representatives in government and after that the elected representatives elect their representatives. Basically, having both direct and indirect representation, the nature of Indian parliamentary democracy is participatory democracy.

## **2. HISTORICAL PERSPECTIVE OF PARLIMENTARY DEMOCRACY**

### **Ancient Indian representative institutions**

Although the makers of the Constitutions adopted the British model of parliamentary democracy, democratic system was not new to India considering that the republican forms of government, deliberative representative bodies and democratic self-governing institutions existed in the many parts of Vedic India (Circa 3000-1000 BC).<sup>8</sup>

At the Rig-Vedic period, the 'Sabha' and 'Samiti' were the highly prestigious assemblies and centres of democratic faith of the peoples. These institutions were committed to the public welfare and establishment of justice in the State.<sup>9</sup> The general assembly was called 'Samiti', whereas the assembly of the elders and selected people was called 'Sabha'. The Sabha was

<sup>5</sup> Now, thus is expressly ensured by amending Article 74(1), which was amended by the Constitution (42th Amendment) Act, 1976, and the 44<sup>th</sup> Amendment Act, 1978. Quoted in: Basu, 2013.

<sup>6</sup> S.R. Chaudhari v. State of Panjab, (2001) 7 SCC 126.

<sup>7</sup> Kihota Hollohon v. Zachilucase, AIR 1993 SC 457.

<sup>8</sup> Cited in: Kashyap, 2006

<sup>9</sup> Sabha chamam samithishchavatam parjapate duhirtarow samvidane, Atharvaveda 7/12/1: Id., p.96; Rigveda, 2/72/4. Sabhas and Samitis enjoyed high prestige. The Atharvaveda describes them as the twin daughters of the Parjapati, the creator, 'sent to the people as his agent to complete his work of creation'. The people regarded them as divine institutions of hoary antiquity. They were closely associated with the affairs of the state. They were the institutions devoted to the public welfare and national security; they had considerable authority, influence and prestige; their aims included establishment of justice and promotion of happiness and prosperity among the people.

the house of the people and the *Samiti* was the Special or the upper chamber consisting of the representatives of the Clergy and upper and propertied classes.<sup>10</sup> The villages had their popular representative institutions and the village level assembly or representative institutions were called *Sabhas*, while the central Assembly for the whole State which functioned from the Capital was the *Samiti* (Altekar, 1949).<sup>11</sup> Members of the *Sabha* were called *Sabhasad* and the speaker in charge of maintaining order in the *Sabha* was called *Sabhapati* or *Sabhadhyaksha*, while the Sergeant or the Marshal was the *Sabhupal*. The Rigveda lays down the qualifications for the persons to be chosen as the *Sabhadhyaksha*. He should be well versed in the matters of state, experienced, astute and not a novice in politics. He should be impartial, learned, righteous, benevolent and matured by advance age and learning (Jayaswal, 1936, 1955).<sup>12</sup>

The *Yajurveda* makes it clear that a person can ascend to the King's throne only with the approval of the people.<sup>13</sup> The *Nitishastra* (science of polity or political science) of *Shukracharya* (a 10<sup>th</sup> century work) gives us some idea of Indian polity as it was conceived prior to the Turkish and Afgan invasions. The King was not to act upon his own opinions, but upon the opinions of majority of the people. "Public opinion is more powerful than the king as the rope made of many fibers is strong enough to drag a lion" (Nehru, 1981: 248-249; Nehru, 1982: 130-131).

The *Sabha* and the *Samiti* constitute effective checks on King assuming autocratic powers regarding peace and war. The *Sabha* and *Samiti* were to advise and assist the King, and to inspire and encourage him to work for the welfare of the people. Very often the fate of a King depends on his ability to carry his *Samiti* along with him. The practice of the King presenting himself before the *Samiti* continued probably as long as the *Samiti* existed.<sup>14</sup>

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<sup>10</sup> But some of the scholars had different views on the concept of *Sabha* and *Samiti*. Some of them considered the *Sabha* as the general assembly and the *Samiti* as gathering of the elders and selected ones. There seems to be no agreement among the scholars as regards their interrelationship and composition. Zimmer for instance, thought that *Sabha* was the village assembly and the *Samiti* the Central Assembly of the whole tribe. Hildebrandt thought that *Sabha* and *Samiti* were much the same, *Samiti* being the Assembly and *Sabha* its meeting Place. K.P. Jayaswal's view was that *Samiti* was probably the national assembly and the *Sabha* was its standing body. However, he candidly admits that the exact relation between these two bodies cannot be deduced from the available evidence. (K.P. Jayaswal, *Hindu Polity*, 12-13(Banglore, 1936, 1955).

<sup>11</sup> It also has to be noted that, in the Rigvedic period, the States were small with a capital not much larger than the few dozen villages comprised in it.

<sup>12</sup> Sacred books of the East, XXXIX, 362; Atharvaveda, 7/12/2; Rigveda, 1/80/3, 4/41/5; Jayaswal, 1936, 1955

<sup>13</sup> Yajurveda, Chapter 10, Slokas 3 and 4.

<sup>14</sup> Rigveda, 10/125/6; Atharvaveda, 4/30/5, 15/9/1-3; Jataka Varg, pp.54, 483, 198, 135, 115,334; In: K.P. Jayaswal, *Hindu Polity*,13( Banglore, 1936, 1955); C. Ashokevardhan, *Political Legacy of the Rigveda*, 169 (1987); Mridul Lata, *Vedic Sachitya Men Rajya Vyavstha* (1989)(unpublished Ph.D. Dissertation, Meerut University); 'The King became either a hereditary or elected executive head of the republic or an archon administration for a brief and fixed period or else he altogether disappeared from the polity of the state. This turn must have come about in many cases by a natural evolution of the power of the assemblies but, in other cases, it seems to have been secured by some kind of revolution and there appear to have been vicissitudes, alterations between periods of monarchial and periods of republican government. Among a certain numbers of Indian people, the republican form finally asserted its holds and proved itself capable of a strong and settled organization, long-lasting over many centuries. In some cases, they were governed by a democratic assembly, in others, by an oligarchical senate. It is unfortunate that we know little details of the Constitution and nothing of the inner history of these Indian republics, but there is clear evidence of the high reputation they enjoyed throughout India for excellence and efficiency of their civil and military organization. There is an interesting dictum of Buddha: so long as the republican institutions were maintained in their purity and vigour, a small state of this kind would remain invisible even by the arms of powerful and ambitious Magadha monarchy. This opinion is amply confirmed by the political writers who consider the alliance of the republics the most solid and valuable political

### The ancient republics

The *Aitareya Barhamana*, *Panini's Ashtadhyayi*, *Kautilya's Arthashastra*, the Mahabharata, inscription on Ashoka's pillars, writing of the contemporary Greek historians and the Buddhist and Jain Scholars, and the *Manusmriti* provided the evidence of the existence of a number of functioning republics during the post-Vedic period of history (66B.C. to 385A.D.).<sup>15</sup>

After the great war of the Mahabharata, large empires began to fade away and a number of republican states grew. As many as sixteen Republics including Kasi, Koshal, Magadha, Kuru, Anga, Avanti, Gandhar, Vaisali, Matsya etc. were came into existence. *Jatakas* makes many references to how these republics functioned. The member met in a place called *Santhagar*. People's representatives were elected in upon assembly. They selected their *gopa* who became the King and ruled with the help of a Council of Ministers (Shah, 1989: 85-86).

A study of the *Buddhist Bhikshuk Sanhas* would show not only that there were Parliaments (*Sanghas*) but that *Sanghas* knew and observed a great number of rules of Parliamentary procedure known to modern times. Thus, they had rules regarding seating arrangements, motions, resolutions, quorum, whip, voting ballot, counting of the votes, censure motion, *Res Judicata*, etc. These rules of parliamentary procedures were applied to the meeting of the *Sanghas*; presumably, they were borrowed from the rules of political assemblies functioning in the country during those times (Ambedkar, 1949).

Near Pataliputra (now Patna), there was the city of Vaisali. This was the capital city of the *Lichavis*. The State is known to have been a republic governed by an assembly of the notable, with the elected President who was called the *Nayaka*. Pataliputra had an elected municipal council of thirty members with six committees, each comprising five members. There were *panchayats* for the administration of justice and court of appeal. The Greek scholar Megasthenes left records of the popular assemblies that were preserved in the south and which restrained the power of the Kings.<sup>16</sup>

### 3. CONSTITUTIONAL AND JURISTIC APPROACH TO PARLIAMENTARY DEMOCRACY

#### Office of President and Council of Minister

The President is the highest dignitary in the realm, the symbol of the statehood, the embodiment of the unity of the country, and represents the sovereign will of the nation. The office of the President came into existence immediately after the Constitution was adopted on Nov. 26, 1949. There is no exception to this rule. Therefore, the operation of the constitutional scheme or structure cannot be envisaged even for a short while without a President of India being in the office (Singh, 2010: 363).

The constitutional position of the President of India, envisaged in the provisions of Articles 53, 74 and 75, may be particularly referred to. Article 53 the Constitution vests the executive power of the union in the President, but he is required to exercise his

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and military support a King could have. (Sri Aurobindo, *The Foundations of Indian Culture*, 327-328, (Pondicherry, 6<sup>th</sup> edn., 1975).

<sup>15</sup> Radha Kumud Mookerjee, *Glimpses of Ancient India* 5-6, 40-41, 45-46 (Bombay, 1970); Balashastrri Hardas, *Glimpses of Ancient Vedic Nation* 14 (Madras, 1967), A.S. Altekar, *State and Government in ancient India* 83-86, 95-112 (Delhi, 1949); K.P. Jayaswal, *Hindu Polity*, Chapter X (Bangalore, 1936, 1955).

<sup>16</sup> *Report on First General Elections in India*, 1951-52, vol.1, p. 7; In: Giriraj Shah, *Glimpses of Ancient Indian Culture* 25-26, 80 (Noida, 1989); Jawaharlal Nehru, *Discovery of India* 127 (Oxford, New Delhi, 1981).

powers in accordance with the Constitution. Article 74 says that there shall be the Council of Ministers to aid and advise the President in the exercise of his function, and he shall act in accordance with such advise. Article 75(3) lays down that the Council of Ministers shall be collectively responsible to the house of the people. There is no provision in the Constitution which makes the President accountable to the legislature.

In *Ram Jwya Kapur v. State of Panjab*,<sup>17</sup> it was observed that the executive power is vested in the President but the President is only a formal or constitutional head of the executive. The real power is vested in the Council of the Ministers, on whose aid and advice the President acts in the exercise of his function. The executive has the primary responsibility to formulate governmental policy and to transmit it into the law. But it is responsible for all its action to the legislature and, therefore, it must retain the confidence of the legislature. The basis of this responsibility is embodied in Article 75(3). The President acts on the aid and advice of the Council of Ministers in executive action, and he is not required by the Constitution to act personally without or against the advice of the Council of Ministers.

In *U.N.R. Rao v. India Gandhi*,<sup>18</sup> it was observed that the harmonious reading of the mandatory character of Article 74(1) along with Article 75(2) and 75(3) is that the President cannot exercise executive powers without the aid and advice of the Council of Ministers even after the President has dissolved the legislature. Article 74(1) is mandatory and therefore the President cannot exercise executive powers without aid and advice of the Council of Ministers.<sup>19</sup>

The essence of parliamentary democracy is that the Council of Minister shall be responsible to the House of the People. The Constitution of India, under Article 75(3),<sup>20</sup> explicitly provides for responsible government. In the United Kingdom, the concept is that of individual and collective responsibility of Ministers. The Constitution of India provides only for the collective responsibility, which means that there can be no vote of no-confidence against a single Minister. The Council of Ministers is collectively responsible to the House of the People for all acts of government. Therefore, it stands and falls together (Kashyap, 2008: 1027).

### **Judicial approach to collective responsibility**

In *U.N.R. Rao v. Smt. Indira Gandhi*<sup>21</sup>, the Supreme Court held that the ministers constituting the Cabinet act upon the principle of collective responsibility. Our Constitution, though federal in its structure, is modeled on the British parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law, although the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. In *Sanjeevi Naidu v. State of Maharashtra*<sup>22</sup>, Justice N.S. Hagde, while observing the essence of joint responsibility, held that the Cabinet is responsible to the legislature for every action taken by any of the Ministries. The object of collective responsibility is to make the whole body of Minister collectively or vicariously responsible for acts of other Ministers if an individual

<sup>17</sup> *Ram Jwya Kapur v. State of Panjab*, AIR 1955 SC 549.

<sup>18</sup> *U.N.R. Rao v. India Gandhi*, AIR 1971 SC 1002.

<sup>19</sup> *Samsher Singh v. State of Punjab*, AIR 1974 SC 2192.

<sup>20</sup> Article 75 (3) reads: "(3) The Council of Ministers shall be collectively responsible to the House of the People."

<sup>21</sup> *U.N.R. Rao v. Smt. Indira Gandhi*, 1971 SCC (2) 63.

<sup>22</sup> *Sanjeevi Naidu v. State of Maharashtra*, AIR 1970 SCR 1102, 1106.

minister may not personally be responsible for it; yet, he will be deemed to share the responsibility with those who may have actually committed some wrong.<sup>23</sup> In *Common Cause, a Registered Society v. Union of India*,<sup>24</sup> the Apex court described the meaning of “collective responsibility”. The first meaning which can legitimately be ascribed to it is that all members of a Government are unanimous in support of its policies and would exhibit that unanimity on public occasions although, while formulating the policies, they might have expressed a different view in the meeting of the Cabinet. The other meaning is that Ministers, who had an opportunity to speak for or against the policies in the Cabinet, are thereby personally and morally responsible for its success and failure. The Cabinet stands or falls together. In practice, collective responsibility today means that every member of the Government must be prepared to support all Cabinet decisions both inside and outside the House.

### **Juristic approach to parliament’s power to amend the constitution and independence of the judiciary**

The power of Parliament to amend the Constitution and procedure is provided under Article 368 of the Constitution of India. The Parliament has constituent power to amend by the way of addition, modification or repeal any provision of the Constitution (Article 368 (1)).

The amendment may be initiated only by the introduction of a Bill for that purpose in either House of the Parliament, and when the Bill is passed in each house by a majority of the total membership of that House and by a majority of not less than two-third of the members of that House present and voting. After that, the Bill is presented to the President of India who shall give his assent to the Bill, and the Constitution shall stand amended in accordance with the terms of the Bill (Article 368 (2) of the Constitution).

### **Parliamentary privileges and the freedom of speech in Parliament**

The Constitution of India provides the Parliamentary Privileges to the Members of Parliament (Article 105) as well as the Members of the State Legislatures (Article 194). The parliamentary privileges are an essential immunity to the high and multifarious functions which the legislature is called upon to perform (Qureshi, 1996: 20). The essence of parliamentary democracy is free, frank and fearless discussion in Parliament. For a deliberative body like a House of Parliament, freedom of speech within the House is of utmost significance. To enable members to express themselves freely in the House, it is essential to minimize any fear that they can be penalized for anything said within the House (Jain, 2008: 86). The members of Parliament have freedom of speech in Parliament by virtue of Article 105(1) of the Constitution of India. The Constitution of India gives privileges to the members of Parliament that they shall not be liable in any proceeding in any Court in respect of anything said for any vote given by him in Parliament. In Article 105 (2), the Constitution provides immunity from the liability in respect of publication by or under the authority of either House of Parliament of any report, paper, vote and proceedings. Article 194 of the Constitution provides the powers and privileges to the members of Legislative Assemblies and their Committee. The freedom of speech and powers and privileges are subject to Section 15 of the Constitution (44<sup>th</sup> Amendment) Act, 1978.

<sup>23</sup> *State of Karnataka v. Union of India*, AIR 1978 SC 68.

<sup>24</sup> *Common Cause, A Registered Society v. Union of India*, (1999) 6 SCC 667.

In *M.S.M. Sharma v. Sinha*<sup>25</sup> and *Keshav Singh v. Speaker of Legislative Assembly*,<sup>26</sup> the Supreme Court observed that Article 105(1) secures the freedom of speech in Parliament to its members. This freedom is “subject to the provisions of the Constitution.” These words have been construed to imply provisions of the Constitution regulating the procedure of Parliament, i.e. Articles 188 and 121. In *P.V. Narsimha Rao v. State*,<sup>27</sup> a broader interpretation was given by the five-judge bench, stating that Article 105(2) protects a Member of Parliament against court proceedings that relate to or concern, or have a connection or nexus with anything said, or a vote given, by him in Parliament. The majority judges insisted that to enable MPs to participate fearlessly in Parliamentary debates, members need the wider protection of immunity against all civil and criminal proceedings that ‘bear a nexus to their speech or vote’. In *Advocate M.L. George v. High Court of Kerala*,<sup>28</sup> it was observed that the Legislature, being protected by privilege under Article 194, is not answerable to Court for voting in a particular manner in Parliament. No person can claim any legal right to have a rule framed in a particular manner and the rule-making authority does not owe any corresponding duty to do the same.

### Elections and adult suffrage

In a democratic system, election plays a vital role for representation in Parliament. The three pillars of democracy include fair and free elections, freedom of thought, expression and press, and independent judiciary. Election laws are called the ‘Ganges’ of our political system (Singhvi, 2006: 3284). According to Clause (d) of Section 2(1) of the Representation of the Peoples Act (1951), ‘Election’ means an election to fill a seat in either House of the Parliament or either House of the legislature of a State other than the State of Jammu and Kashmir.<sup>29</sup> The word ‘election’ is used in Part XV of the Constitution of India in a wide sense, i.e., to connote the entire procedure to be gone through to return a candidate to the legislature.<sup>30</sup> Specifically, it includes provisions regarding the election in India. The expression “conduct of the business” used in Article 324 of the Constitution of India specially points to the wide meaning, and that meaning can also be read consistently into other provisions which occur in Part XV including Article 329(b).<sup>31</sup> The office of the Election Commission of India is established under Article 324 for superintendence, direction and control of the elections.<sup>32</sup>

As a significant aspect of Indian democracy, it was the first time that Constitution conferred the right of Universal Adult Suffrage, which meant that every adult citizen male or female irrespective of race, caste, religion or color had the right to vote, while in the economically developed and advanced western countries protracted battles had to be fought by women liberation and organizations and others before their right could be recognized. Under Article 326, the Indian Constitution provides the right to vote in elections. In a land where only one out of five people could read, the grant of universal adult suffrage was a brave decision and an Act of faith (Kashyap, 1991: 168). The age to

<sup>25</sup> *M.S.M. Sharma v. Sinha*, AIR 1959 SC 395, 408-409.

<sup>26</sup> *Keshav Singh v. Speaker of Legislative Assembly*, AIR 1965 All 349.

<sup>27</sup> *P.V. Narsimha Rao v. State*, AIR 1998 SC 2120, 2182.

<sup>28</sup> *Advocate M.L. George v. High Court of Kerala*, AIR 2010 Ker 134.

<sup>29</sup> *Pashupati Nath Sukul v. Nem Chandra Jain*, AIR 1984 SC 399 (405.)

<sup>30</sup> *Election Commission of India v. Shivaji*, AIR 1988 SC 61 (64).

<sup>31</sup> *N.P. Ponnusawami v. Returning Officer*, AIR 1952 SC 64

<sup>32</sup> Article 324: “Superintendence, direction and control of elections shall be vested in an Election Commission”.



cast a vote in the election was the age of 21, but after the 61<sup>st</sup> amendment in 1988, the prescribed age limit is the age of 18. The provision on the adult suffrage under Article 324 is the one of the pillars of the Constitution which ensures democracy and social change. In a highly stratified society that sanctions some of the existing inequalities, including those of resource and income, adult suffrage is the surest way of achieving the goals of justice, liberty, equality, brotherhood and dignity enshrined in the Preamble of the Constitution (Singh, 2010: 914 ).

### **Role and position of the Speaker/Chairman in the House of the People and respective State Legislatures**

In the House of the People, the role of the Speaker is very important as all parliamentary proceedings are observed by him or done in his presence. The position of the Speaker and Deputy Speaker is prescribed under Article 93 of the Constitution of India. The House of the People is obliged to choose, as soon as possible after its first sitting, two members of the house to be Speaker and Deputy Speaker, respectively. Both hold the office during the life of the House. The Speaker and Deputy Speaker can be removed by majority of the members of the House by passing of the resolution against them. Generally, the Speaker does not cast his vote in the House but in case of the tie vote, he can cast his vote. Under Article 122 of Indian Constitution, the conduct of the Speaker in terms of the procedure or maintaining order in the House is not subject to jurisdiction of any Court.

### **Juristic approach to the Speakers and Chairmen Office**

The Speakers or Chairmen hold a pivotal position in the scheme of parliamentary democracy. They are guardians of the rights and privileges of the House. They are expected to make far reaching decisions in the functioning of parliamentary democracy. The power to adjudicate questions under the Schedule X in such constitutional functionaries should not be considered exceptionable.<sup>33</sup> In *Kihota Hollohon v. Zachilth*, Justice M.N. Venkatachaliah observed that “it would, indeed be unfair to high traditions of the great office to say that the investiture in it of this jurisdiction would be vitiated for violation of a basic structure of Democracy. It is inappropriate to express distrust in the high office of the Speaker, merely because of the Speakers are alleged, or even found, to have discharge their functions not in keeping with the great traditions of the high office of Speaker.”

### **Nominations and position of Governors**

Articles 153 to 158 of the Constitution of India provide for the office of the Governor, including their appointment, term of office, qualifications and conditions. Governors in India are not elected; they are nominated by the Ruling party.<sup>34</sup> The Governor of a State is appointed by the President and holds office at his pleasure. Only in some matters he has got a discretionary power but, in all others, the State administration is carried out by him

<sup>33</sup> *Kihota Hollohon v. Zachilth* AIR 1993 SC 453.

<sup>34</sup> Nehru observed “we must base democracy on the electoral process. We have done it. But the point is whether we should duplicate it again and again. That seems to me unnecessary, apart from leading to conflict and waste of energy and money, it also leads to a certain descriptive tendency in this huge context of elective Governor plus parliamentary system of democracy. Therefore, I should like to support fully the amendment proposed that Governor should be nominated.” (Ambedkar, 1949, Constituent Assembly Debates, Vol. VIII, p. 445-56).

or in his name, by or with the aid and advice of the Ministers. Every action, even of an individual Minister, is the action of the whole Council, and it is governed by the theory of joint and collective responsibility. But the Governor is there, as the head of the State, the Executive and the Legislature, to report to the Centre about the administration of the State."<sup>35</sup>

#### 4. ISSUES AND CHALLENGES

The makers of the Indian Constitution, while adopting the parliamentary form of government, had a view that parliamentary democracy will be the best suitable form of government for India. Most of the members of the Constituent Assembly were in favour of adopting the British parliamentary system as the role model for Indian parliamentary democracy. Pt. Jawahar Lal Nehru, Sardar Patel, K.M. Munshi, Dr. B.R. Ambedkar and Alladi Krishnan Ayyer strongly believed that British parliamentary system would be the best model, which would be able to meet with all democratic problems and aspirations in the future. But, after 66 years of the republican system of governance, we find that the operation of this parliamentary system is not so smooth or free of hurdles. In the past period, a number of problems have been observed in the practical functioning of parliamentary democracy.

##### **Legal issues**

###### *1. Role of President*

The essence of the parliamentary democracy is that the Council of Ministers shall be responsible to the House of the People. In *U.N.R. Rao v. Indira Gandhi*,<sup>36</sup> the Supreme Court observed that the President is only the constitutional head and must act on the advice of the ministers, whereas the real executive powers are to be exercised by the Council of Ministers. The 44<sup>th</sup> Amendment of the Constitution of India provides that the President may require the Council of Minister to reconsider the advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration. Similarly, under Article 111 of the Constitution of India, the President may return the Bill for reconsideration (unless it is a money Bill). But if the Bill passed again by the Houses, it shall be presented to the President for assent and the President shall have no power to withhold his assent.

There have been few instances when the President sent a Bill for recommendation. In 1986, President sent the 1986 Post Office (Amendment) Bill to the Cabinet. In 2006, President Abdul Kalam sent the amended Parliament (Prevention of Disqualification) Act of 1959 for such recommendation. He assented to it when it was presented to him again, after such reconsideration but without any amendment. Hence, the issue arises: what is the effect of returning a Bill to the Houses if the Council of Ministers has power to present the same Bill after just a formality of passing the Bill again? Then, what is the role of the President's recommendation in the parliamentary form of democracy?

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<sup>35</sup>*State of Karnataka v. Union of India*, 1977 (4) SCC 608.

<sup>36</sup>*U.N.R. Rao v. Indira Gandhi*, AIR 971 SC 1002.

## 2. *Delegated legislation*

The main function of Parliament is to make law for the country. But, usually, what happens is that the legislature enacts a law covering only the general principle and policies relating to the subject matter in question, and confers the rule-making power to the government or to some other administrative agencies. The absence of the Members of Parliament from the proceedings, as well as some un-parliamentary activities (such as watching porn clips, abusing others, throwing shoes, papers, paper weights and ink, sleeping during discussion, unreasonable walk-outs, demonstrations of banners and causing disturbance by raising unnecessary slogans) are the main causes for increasing of delegated legislation in India.

## 3. *Role of Speaker/Chairman with reference to Anti-defection Law*

The office of the Speaker/Chairman has an important position which is always associated with respect, dignity and authority. But, the convention has developed common practice that the Speaker is appointed by the majority party (from their party membership) whereas the Deputy Speaker is appointed from the opposition. Both the Speaker and the Deputy Speaker remain affiliated with their respective party. The Speaker/Chairman functions as a Tribunal while deciding on the matters regarding anti-defections and other disciplinary matters. However, in most cases, it is observed that the Speaker/Chairman keeps his ties with the respective party and misuses the powers by keeping the decisions pending. For example, in the year of 2013, the Speaker of Haryana legislative assembly decided on an anti-defection case involving five Members of State Legislative Assembly. The case was filed in 2009 and decided almost at the end of the tenure of the government. This kind of issue raises the question on the impartiality of the Speaker/Chairman in the parliamentary form of Government. If the impartiality of the office of the Speaker/Chairman is not maintained, how can it act as a tribunal?

## 4. *Qualification of Representatives*

The minimum qualification to contest the election of MPs and MLAs is required in Indian parliamentary system. Article 84 clause (c) of the Constitution of the India provides power to the Parliament to decide the qualifications for its members. The Parliament enacted the Representation of People's Act, 1951 which provides for qualification and disqualifications of the Members of Parliament. Yet, the educational qualification is not specifically provided for being elected for the membership of the Parliament. The Haryana Government has fixed the minimum education qualification for Panchayat elections by the Haryana Panchayati Raj Amendment Act, 2015. The Apex Court of India also observed this amendment constitutional valid in *Rajbala v. State of Haryana* (Civil Writ Petition 671/2015). When a state government can take such a strong step to enhance the standard of elected representatives then why the Parliament cannot take such steps to fix minimum qualifications for MPs and MLAs.

## 5. *Right to reject and recall*

The Election Commission of India has introduced the NOTA option (None of the above) in pursuance of the order of the Supreme Court of India. The issue is: if the electorates chose the NOTA, what purpose will it serve? If a voter does not want to vote

for anyone, why would he come to the polling station to cast his vote? If the voters cast their votes as NOTA, there is no effect on the election. The right to reject or recall an elected representative has not been given yet, although it seems to be a natural right along with the right to vote. After the fair and free election, an elected representative may change his mind in the course of a legislative term, or may be negligent in exercising his duties. In that case, what kind of legal remedy do the voters have at their disposal? In Britain, for example, the local party sometimes calls on a member to resign. Would it be wise to institute recall, *i.e.* the right of the local electorate to decisively request the resignation of a party member? (Singhvi, 2006: 3295)

#### 6. *Office of the Governor*

In Indian parliamentary democracy, there can be different government at the Central level as well as at State level. Conventionally, the Government at the Central level appoints the Governors for the States in India. Sometimes, the governor uses his discretionary powers, which causes disturbance in the governance and policy making. The term of the Governor depends upon the pleasure of the President which acts in accordance with the aid and advice of the Council of Ministers in Parliament. So, the Council of Ministers use their influence over Governors of the States. The insecurity of term of Governor's office can make the Governor pro-Centre government, which is a serious issue regarding democracy.

#### 7. *Reservation for women*

The parliamentary institution represents the will of the citizen of the country. For adequate representation in the democratic system, under Article 334 of the Constitution of India, reservation of seats and special representation in Parliament is provided for SC, ST and Anglo-Indian community. But, the issue of reservation of seats for women representation in Parliament has not been resolved yet. Article 243D (3) of the Constitution of India provides 33% reservation for woman in Panchayat election while Article 243T (2) provides 33% reservation for women in Municipal election. The reservation is given at the lower level, but it is not provided at the central level. In the first Lok Sabha, the representation of women was 4.50% (22 members), while in 2014 the representation of women was 12.15% (66 members). While the global average for Women in Parliament stands at 22.4%, India is at the 103<sup>rd</sup> place out of 140 countries with a mere 12% representation. Within Asia, India is at the 13<sup>th</sup> position out of 18 countries. Countries like South Sudan and Saudi Arabia have better women representation in Parliament than India.<sup>37</sup> With these issues, how can we secure the representation of the citizens' will? There is a need to provide reservation for women representation in Parliament as well as for the representation of socially and educationally backwards citizens.

#### 8. *Participation of citizenry*

The maximum participation of citizens of the country is desirable in parliamentary democracy. But in India, due to poverty, lower numbers of educated voters and a lack of awareness, the participation of all sections of the society are not recorded even after 65

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<sup>37</sup> Source: <https://factly.in/women-in-parliament-where-does-india-figure-among-the-rest-world/> last visited on March 21, 2016 at 3:50 pm.

years of republican form of government. In 1952, the voting percentage in general elections was 61.2%. In 2014, the voting percentage was 66.4%, which is the highest percentage ever recorded. Now, after 62 years, the increase in percentage of participation is just 5.2%. Given the fact that 34.6% citizens do not cast their votes, such kind of growth of participation cannot achieve the aims and aspirations of parliamentary democracy.

### Challenges

Indian parliamentary democracy presently faces the following challenges, which preclude achieving the goals of parliamentary democracy:

- Lesser participation of Citizenry in democratic processes
- Education and raising awareness of the electorate,
- Corruption in politics
- Criminalization of politics
- Negative role of the media (yellow journalism, fake election surveys).

### CONCLUSION

Pursuant to the Indian Constitution, the envisaged form of government is the parliamentary democracy based on the British model of popular representation and control. The envisaged tenets of parliamentary democracy are: (1) representation of the people, (2) responsible government, (3) accountability of the Council of Ministers to the legislature. Yet, after 66 years of the republican system of governance, we find that the operation of this parliamentary system is not so smooth or free of hurdles. In the past period, a number of problems have been observed in the practical functioning of parliamentary democracy in India. The discussed issues and challenges show that the character and content of parliamentary democracy ultimately depend on the quality of the persons who man the legislature as representatives of the people. Given that debate, discussion and persuasion are the means and essence of the democratic process, *there is a need to ensure maximum citizen participation and representation of all sections of the society, to raise the qualification standard of elected representatives, to enhance women representation in Parliament, and to vest more power in the local electorate by ensure the right to recall an elected representative. Above all, it is essential to address the observed problems and negative tendencies which preclude achieving the goals of parliamentary democracy in India.*

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## **PARLAMENTARNA DEMOKRATIJA U INDIJI: PROBLEMI I IZAZOVI**

*Predmet ovog rada je parlamentarna demokratija u Indiji, sa posebni osvrtom na probleme i izazove sa kojima se ona suočava. Iako su ustavotvorci usvojili britanski model parlamentarne demokratije, demokratske institucije su postojale u mnogim krajevima Indije još u drevnoj vedskoj kulturi. U tom istorijskom kontekstu, autor objašnjava koncepte "Sabha" i "Samiti", drevnih institucija reprezentativne demokratije u Indiji. U skladu sa Ustavom, narod Indije ostvaruje svoja suverena prava kroz Parlament (Dom naroda) na centralnom nivou i kroz državna zakonodavna tela u svakoj pojedinačnoj državi. Nosilac izvršne vlasti je Predsednik, kao najviši državni zvaničnik koji je simbol državnosti i oličenje državnog jedinstva. On predstavlja suverenu volju naroda i obavlja svoje funkcije uz pomoć Veća ministara. Autor navodi brojne slučajeve iz sudske prakse koji ilustruju sudski pristup različitim ustavnim problemima u razvoju parlamentarne demokratije u Indiji, koncept nezavisnog sudstva i njegovu moć da utiče na promenu Ustava. Nakon osvrta na privilegije poslanika i slobodu govora u Parlamentu, autor objašnjava koncept parlamentarnih izbora i univerzalnog prava glasa u Indiji, i razmatra ulogu i položaj predsednika/predsedavajućeg Doma naroda na centralnom nivou i predsednika odgovarajućih državnih zakonodavnih tela na lokalnom nivou. Na kraju, autor identifikuje konkretne probleme uočene u praksi, kao i izazove sa kojima se suočava parlamentarnu demokratiju u Indiji.*

*Ključne reči: parlamentarna demokratija, Indija, demokratske institucije, ustavne nadležnosti, sudska praksa, problemi i izazovi.*

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