



सत्यमेव जयते

PARLIAMENT OF INDIA RAJYA SABHA

EXECUTIVE - ITS ACCOUNTABILITY TO PARLIAMENT





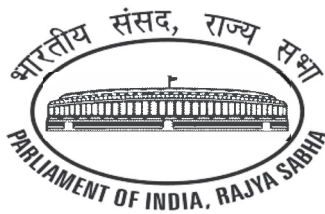
“BOOKLETS IN THIS SERIES”

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RAJYA SABHA**

**EXECUTIVE - ITS ACCOUNTABILITY
TO PARLIAMENT**



**RAJYA SABHA SECRETARIAT
NEW DELHI**

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PREFACE

This booklet is part of the series of booklets brought out for the benefit of the newly elected Members of Rajya Sabha. It covers briefly different aspects of the relationship between Parliament and the Executive. For detailed information, original sources may be referred to.

It is intended to serve as a handy guide for ready reference. I hope the Members will find the booklet useful.

New Delhi
July, 2020

DESH DEEPAK VERMA
Secretary-General

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RELATIONSHIP BETWEEN PARLIAMENT AND THE EXECUTIVE

One of the most important questions which engaged the attention of the framers of the Constitution was the nature of the Executive and its relation with the Legislature. While introducing the draft Constitution, Dr. B.R. Ambedkar observed in the Constituent Assembly:

A student of constitutional law, if a copy of a Constitution is placed in his hands, is sure to ask two questions. Firstly, what is the form of Government that is envisaged in the Constitution; and secondly, what is the form of the Constitution? For these are the two crucial matters which every Constitution has to deal with.¹

The decisions of the Constituent Assembly on the form of Government in India were considerably influenced by the political background of India and the practice and traditions evolved during the British rule.² It is, therefore, not surprising that from the initial stages of the discussions on the principles of the new Constitution, opinion appears to have been overwhelmingly in favour of adopting for India an Executive responsible to the Legislature in accordance with the British tradition. Dr. B.R. Ambedkar made an exhaustive and authoritative statement on the general character of the Executive while introducing the Draft Constitution in the

¹ Constituent Assembly Debates (C.A. Deb.), Vol. VII, 4 Nov. 1948 - 8 Jan. 1949, pp. 31-32.

² B. Shiva Rao, *The Framing of India's Constitution: A Study*, 1968, p. 334.

Constituent Assembly on November 4, 1948. He observed, *inter alia*:

The Parliamentary system differs from a non-Parliamentary system in as much as the former is more responsible than the latter but they also differ as to the time and agency for assessment of their responsibility. Under the non-parliamentary system, such as the one that exists in the U.S.A., the assessment of the responsibility of the Executive is periodic. It takes place once in two years. It is done by the electorate. In England, where the Parliamentary system prevails, the assessment of responsibility of the Executive is both daily and periodic. The daily assessment is done by members of Parliament through Questions, Resolutions, No-confidence motions, Adjournment motions and Debates on Addresses. Periodic assessment is done by the electorate at the time of the election which may take place every five years or earlier. The daily assessment of responsibility which is not available under the American system is, it is felt, far more effective than the periodic assessment and far more necessary in a country like India. The Draft Constitution in recommending the Parliamentary system of Executive has preferred more responsibility to more stability.³

In furtherance of this, the Constitution of India elaborately defines the position, powers and the inter-relationships of the various organs of State and of other institutions.

³ C.A. Deb., Vol. VII, 4 Nov. 1948 - 8 Jan. 1949, pp. 32-33.

The Constitution of India provides for a Parliament consisting of an elected President⁴ and two Houses namely, the Council of States (Rajya Sabha) and the House of the People (Lok Sabha).⁵ The President appoints the Prime Minister and, on his advice, other Ministers of the Council of Ministers. The Council of Ministers is collectively responsible to the House of the People.⁶ The President summons the two Houses of Parliament to meet from time to time. He can prorogue the two Houses and can dissolve the House of the People. The interval between two sessions must not exceed six months.⁷ Parliament usually meets in a year in three Sessions: the Budget Session (January-April), the Monsoon Session (July-August) and the Winter Session (November-December). The first session after each General Election to the House of People and the first session of each year begins with an Address to both Houses of the Parliament assembled together by the President.⁸ The sweep and scope of the legislative jurisdiction and other powers of Parliament under the Constitution are vast. The constituent power also vests in the Parliament and the sovereign will of the people may be said to find expression only through the collective decisions of their elected representatives in Parliament. Nevertheless, Parliament of India is neither sovereign nor supreme.⁹

The authority and jurisdiction of Parliament is limited by the distribution of legislative powers between the Union

⁴ Article 54.

⁵ Article 79.

⁶ Articles 75(1) and 75(3).

⁷ Article 85.

⁸ Article 87.

⁹ In re. Article 143 and Delhi Laws Act (1912), AIR 1951, SC, p. 332.

and the States,¹⁰ the incorporation of a code of justifiable fundamental rights,¹¹ the general provision for judicial review and an independent judiciary. The Supreme Court can declare a law passed by Parliament null and void, as violative of fundamental rights, or as contravening other provisions of the Constitution.¹² Also, under the ruling of the Supreme Court, there are limitations to the power to amend inasmuch as Parliament cannot alter what have been called the basic features of the Constitution.¹³

Conventionally, the terms ‘Legislature’ and ‘Executive’ connote a body which legislates or makes laws and a body which executes them, respectively. But law-making is not the only function of Parliament. Similarly, the term ‘Executive’ is often used rather loosely to connote several different things. Under the Constitution of India, the head of the Executive is the President. All executive power is vested in him and all executive actions are taken in his name.¹⁴ He is, however, only a constitutional Head of the State acting on the aid and advice of the Council of Ministers and as such only the formal Executive. The real or the political Executive is the Council of Ministers.¹⁵ Then, there is permanent administration comprising the civil services – the huge staff of administrators, experts, technocrats and others forming an administrative apparatus which really helps the

¹⁰ Articles 245-246 and the Seventh Schedule.

¹¹ Articles 12-35 and 226.

¹² *K.J. Thomas vs. Commissioner of Agricultural Income-tax*, Madras, AIR 1958, Kerala, p. 6.

¹³ *Kesavanand Bharati vs. State of Kerala*, AIR 1973, SC, p. 1461.

¹⁴ Articles 52-53 and 77.

¹⁵ Articles 74 and 78, *see also Rai Sahib Ram Jawaya Kapur vs. the State of Punjab*, AIR 1955, SC, p. 549.

Ministers in the formulation and implementation of policies. The relationship between the Parliament and the Executive may, therefore, cover the relationship of Parliament with the political executive *i.e.* the Council of Ministers as also the relationship of Parliament with the permanent executive *i.e.* the civil services.

The question of relationship between the Executive and the Legislature has been engaging the attention of political thinkers and constitutional theorists alike in Britain as also elsewhere. For instance, there has been much talk of the diminishing role of Parliament and the increased power of the Executive in the British political system. Critics have sometimes examined current trends and have tried to suggest concrete remedies; they have frequently looked back to an alleged 'golden age' when the balance between the Legislature and the Executive was better maintained. Others have reached the pessimistic conclusion that little can be done to alter the situation.¹⁶ There are two broad views about the functions of Parliament *vis-à-vis* the Executive. The first refers to parliamentary sovereignty, ministerial responsibility and the parliamentary surveillance. The second refers to the responsibility of the Government, the danger of political interference with civil servants and the importance of debate rather than control.¹⁷ Halsbury's Laws of England describes the Executive-Legislative relationship as follows:

Parliament is not an executive authority, but either directly or indirectly it exercises a dominating control over

¹⁶ H.V. Wiseman, *Parliament and the Executive: An Analysis with Readings*, 1966, p. xiii.

¹⁷ *Ibid*, p. 16.

the action of the Crown and of the executive Government and the administration of the laws which it has enacted. This control is effected in various ways, namely:

1. By the legal restrictions which prevent the Crown or its ministers from imposing any charge upon the people or from maintaining a standing army in time of peace without the consent of Parliament;
2. By the doctrine of the Constitution by which supply is granted annually by the House of Commons and must receive legislative sanction each year;
3. By means of the rule by which supply granted to the Crown must be appropriated to the particular purposes for which it has been granted; and
4. By the doctrine of the Constitution by which a Minister of the Crown is held responsible to Parliament for any act done by him in his ministerial capacity, or by the Ministry or Department of which he is the political head or for any advice tendered by the Minister to the Sovereign.¹⁸

John Stuart Mill holds that there is a radical distinction between controlling the business of Government and actually doing it. According to him, a numerous assembly is as little fitted for the direct business of legislation as for that of administration. The only task in which a representative assembly can possibly be competent is not that of doing the

¹⁸ H.V. Wiseman, *Parliament and the Executive: An Analysis with Readings*, 1966, pp. 16-17.

work, but of causing it to be done; of determining to whom and to what sort of people it shall be confided, and giving or withholding the national sanction to it when performed. In J.S. Mill's view, therefore, the proper function of a representative assembly is to watch and control the Government; to throw the light of publicity on its acts, to compel a full exposition and justification of all of them which anyone considers questionable; to censure them, if found condemnable, and, if men who compose the Government abuse their trust, or fulfil it in a manner which conflicts with the deliberate sense of the nation, to expel them from office.¹⁹

According to the second view, Parliament is not a corporate entity so much as an arena or forum. In this arena, individual members air grievances and group of members carry on the party struggle. Ministers appear so that members can 'have a go' at them: debates on large issues are staged so that the opposition may present an alternative policy for the benefit of the electors. In other words, this view assigns Parliament a subservient role even though its debates may make newspaper headlines.²⁰

The Indian system, however, represents a real fusion of the executive and legislative authorities. As per the Constitution, as also in actual practice, the relationship between the Executive and the Legislature is one that is the most intimate and ideally does not admit of any antagonism or dichotomy. The two are not visualized as competing centres of power but as inseparable partners or co-partners in the business of Government. Parliament is a large body. It does

¹⁹ H.V. Wiseman, *Parliament and the Executive: An Analysis with Readings*, 1966, pp. 23-24.

²⁰ A.H. Birch, *Representative and Responsible Government: An Essay on the British Constitution*, 1964, pp. 166-67.

not and cannot govern. The Council of Ministers is the grand executive committee of Parliament charged with the responsibility of governance on behalf of the parent body. It is drawn from and remains a part of the Parliament and is responsible to the Lok Sabha. The relationship between the Executive and the Legislature may be said to be that of a part to the whole and one of interdependence.

While the Executive has almost unlimited right to initiate and formulate legislative and financial proposals before Parliament and to give effect to approved policies, unfettered and unhindered by Parliament, Parliament has the unlimited power to call for information, to discuss, to scrutinise and to put the seal of approval on the proposals made by the Executive. The Executive (*i.e.* the political executive, the Council of Ministers) remains responsible and the administration accountable to the Parliament. It is the function of Parliament to exercise political and financial control over the Executive and to ensure parliamentary surveillance of administration. Executive responsibility and administrative accountability are two different functional concepts.

The head of every Government Department is a Minister. Parliament exercises control over the Department through the Minister. A Ministry has practically an autonomous existence of its own and conducts its business in pursuance of statutory provisions, rules and regulations or according to a long-standing practice. The parliamentary control over the Ministry rests on the premise that any action of the Ministry can be called into question by any Member and the Minister responsible for the administration of that Ministry has to defend the acts of his officials. It is a well-

established constitutional principle that a Minister is responsible to Parliament for all the acts of the Ministry and it is he who takes the blame, should Parliament disapprove of any administrative act. There can, however, be a case where a civil servant acts either intentionally or irrationally outside the policy of his Minister or contrary to that policy. By doing so, he relieves the Minister of the responsibility of protecting him. But the constitutional responsibility of the Minister to Parliament remains and he has to satisfy Parliament that he is dealing with the matter adequately.²¹ Administrative accountability means the accountability of the administration to Parliament. Parliament does not interfere with day-to-day administration nor does it control administration. Accountability to it is technical and indirect through the Ministers, and it is *ex-post-facto*, *i.e.* after action has ended. Also, it has to be based on specific grounds. Under the Indian system, after a policy is laid down, a law is passed or monies are sanctioned, it is administration which is required to execute and implement. Parliament cannot itself administer nor can the Ministers. It is, therefore, the officers – and not the Ministers – who have to explain if things go wrong in the process of implementation.²²

In a parliamentary democracy, Parliament embodies the will of the people and it must, therefore, be able to oversee the way in which public policy is carried out so as to ensure that it remains in sync with the objectives of socio-economic progress, efficient administration and the aspirations of the people as a whole. This, in a nutshell, is the *raison d'être* of

²¹ Kaul, M.N. and S.L. Shakhder, *Practice and Procedure of Parliament*, 7th Edn., 2016, p. 1204.

²² Subhash C. Kashyap, *The Parliament and the Executive in India* (Published in the *Journal of Society of Clerks-at-the Table*, Vol. XLIX), 1981, p. 70.

parliamentary surveillance of administration. Parliament has to keep a watch over the behaviour of administration. It can enquire and examine *ex-post-facto* whether the administration has acted in conformity with its obligations under the approved policies and utilised the powers conferred on it for purposes for which they were intended and whether the monies spent were in accordance with parliamentary sanction. This ensures that the officials remain aware of the fact that they would be ultimately subject to parliamentary scrutiny and answerable for what they do or fail to do. But in order to be able to conduct meaningful scrutiny and call the administration to account, Parliament must have the technical resources and information wherewithal.²³

The various procedural devices like the system of Parliamentary Committees, Questions, Calling Attention, Half-an-Hour Discussion, etc. constitute very potent instruments for effecting parliamentary surveillance over administrative action. Significant occasions for review of administration are also provided by the discussions on the Motion of Thanks on the President's Address, the Budget demands and particular aspects of governmental policy or situations. These apart, specific matters may be discussed through motions on matters of urgent public importance, private members' resolutions and other substantive motions. Members are free to express themselves and to say what is good for the country and what modifications are required in the existing policies. Government is sensitive to parliamentary opinion; in most cases it anticipates that opinion; in some cases it bows to it and in some others it may feel that it cannot make any change consistent with its commitments,

²³ S.L. Shakhder, *Glimpses of the Working of Parliament*, 1977, pp. 180-84.

obligations and political philosophy. Nevertheless, during discussions members have full liberty to criticize the administration for its performance and suggest how a particular measure should be carried out or implemented. The discussions are important for they indicate parliamentary mood and bring the impact of public thinking on the administrative apparatus which may otherwise remain immune or impervious to public sentiments and feelings. The parliamentary debates should serve to remind the administration of its duties and obligations. Parliamentary debates affect thinking and action of the administration in variety of ways and that subtle influence, which cannot be measured in terms of any visible units, pervades through all the ranks of administration – high and low. Administrative accountability is thus laid down in these parliamentary discussions and after Parliament approves the policies, administration has complete freedom to implement them in the best manner possible but it is nevertheless haunted and guided by the various viewpoints expressed on the floor of the House.²⁴

Executive or Ministerial responsibility to Parliament or what is often termed parliamentary control over the Executive or the Government is based on:

- (i) the constitutional provision of collective responsibility of the Council of Ministers to the House of the People;²⁵ and
- (ii) the Parliament's control over the Budget.²⁶

²⁴ S.L. Shakhder, *Glimpses of the Working of Parliament*, 1977, pp. 196-97.

²⁵ Article 75(3).

²⁶ Articles 114-16 and 265.

In both these matters, parliamentary control over the Executive is political in nature. The accountability of the Executive is direct, continuous, concurrent and day-to-day. When Parliament is sitting, the continuance of the Government in office depends from moment to moment on its retaining the confidence of the House of the People. The House may at any time decide to throw out the Government by a majority vote *i.e.* if the ruling party loses the support of the majority of the members of the House, its Government goes. No grounds, arguments, proofs or justifications are necessary,²⁷ when the House clearly shows that it does not support the Government of the day, the Government must resign.²⁸ Lack of parliamentary confidence in the Government may be expressed by the House of the People by:

- (a) passing a substantive motion of no-confidence in the Council of Ministers;²⁹
- (b) defeating the Government on a major issue of policy;
- (c) passing an adjournment motion;³⁰ and
- (d) refusing to vote supplies or defeating the Government on a financial measure.

The Executive enjoys the right to formulate the Budget. The Constitution provides for an annual statement of the estimated receipts and expenditure to be placed before

²⁷ *Parliaments of the World*, IPU 1976, pp. 801-02 and 825-27.

²⁸ Kaul, M.N. and S.L. Shakhder, *Practice and Procedure of Parliament*, 7th Edn., 2016, p.768.

²⁹ *Rules of Procedure and Conduct of Business in Lok Sabha*, Rule 198, 16th Edn., 2019, p. 73.

³⁰ *Ibid.*, Rule 56, p. 29.

Parliament. The Executive is completely free to suggest the level of its expenditure and specify the purposes for which various amounts may be required.

It also has full freedom to suggest how revenue should be raised to meet the expenditure. Thus, the entire initiative in financial matters rests with the Government. Nevertheless, parliamentary control over public finance – the power to levy or modify taxes and the voting of supplies and grants is one of the most important checks against the Executive assuming arbitrary powers. No taxes can be legally levied and no expenditure would be incurred from the public exchequer without specific parliamentary authorisation by law.³¹

In a parliamentary form of Government, such as ours, Parliament performs three cardinal functions: to make laws, to represent the people and articulate their concerns and to secure executive accountability. The function of the Executive is to govern, to implement the laws made by Parliament. A country requires laws for the maintenance of public order, for facilitating economic and social progress, and for ensuring a sound and efficient administration. The Executive, for the most part, proposes the legislation and ensures its passage through its legislative majority. The Bills as passed provide the legislative framework for public governance. Control over finance, the power to levy or modify taxes, the voting of supplies and grants, and ventilating people's grievances through different parliamentary devices are the exclusive prerogatives of Parliament. It is through these powers that the Executive accountability to Parliament is enforced.

Under the Constitution of India, the relationship between the Executive and the Parliament is based on mutual trust and confidence. Parliament has almost unlimited right

³¹ Articles 114-16 and 265.

of information and criticism *ex-post-facto* and the Executive has likewise unlimited right to initiate and formulate proposals and policies and to give effect to the approved policies, unfettered and unhindered. In essence, Parliament must respect the Executive and the Executive must feel parliamentary influence all the time. So long as this equilibrium is maintained, there is every reason to believe that the Government of the country will be carried on in accordance with the wishes of the people. The success of our system lies, in fact, in our having this delicate balance.

Nonetheless, there is scope for increasing the influence and control of Parliament over the Executive. One of the proposals which has been debated is to increasingly make use of the existing Committees to strengthen parliamentary control over the Executive. It is well acknowledged that to oversee administration, to scrutinise the actions of Government, to collect, discuss and report on actions and performance of Departments of Government, the parliamentary committees present excellent opportunities to the Members.

With a view to strengthen the Committee System, the two Houses of Parliament gave unanimous approval on 29 March, 1993 for the setting up of seventeen (17) Department-related Standing Committees. These new Committees replaced the three subject-based Committees set up in 1989 and encompassed, for scrutiny purpose within their ambit, all Ministries and Departments of the Government of India. In July 2004, these Committees were increased to twenty-four (24) with a view to streamline the Committee System (Annexure). Out of these twenty-four Committees, eight function under the control and direction of the Chairman, Rajya Sabha. These Committees are entrusted with the following functions:

- (a) to consider the Demands for grants of the related Ministries/Departments and report thereon. The report shall not suggest anything of the nature of cut motions;
- (b) to examine Bills, pertaining to the related Ministries/Departments referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon;
- (c) to consider the annual reports of the Ministries/Departments and report thereon; and
- (d) to consider national basic long-term policy documents presented to the House, if referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon.

These Standing Committees are not to consider matters of day-to-day administration of the related Ministries/Departments.

While inaugurating the Department-related Standing Committee System on 31 March, 1993, the then Vice-President of India and the Chairman, Rajya Sabha, Shri K.R. Narayanan highlighted the purpose of these Committees by saying that these Committees would:

...ensure the accountability of Government to Parliament through more detailed consideration of measures in these Committees. The intention is not to weaken or criticise the administration but to strengthen it by investing it with more meaningful parliamentary support.³²

³² Yogendra Narain, *An Introduction to Parliament of India*, 2007, pp. 35-36.

**DEPARTMENT-RELATED PARLIAMENTARY
STANDING COMMITTEES**

RAJYASABHA

THIRD SCHEDULE

(See Rule 268)

**Allocation of Ministries/Departments to various Department-
Related Parliamentary Standing Committees**

Sl. No.	Name of Committee	Ministries/Departments
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Part I

1	Committee on Commerce	Commerce and Industry
2.	Committee on Home Affairs	(1) Home Affairs (2) Development of North-Eastern Region
3.	Committee on Human Resource Development	(1) Human Resource Development (2) Youth Affairs and Sports (3) Women and Child Development
4.	Committee on Industry	(1) Heavy Industries and Public Enterprises (2) Micro, Small and Medium Enterprises

Sl. No.	Name of Committee	Ministries/Departments
5.	Committee on Science and Technology, Environment, Forests and Climate Change	(1) Science and Technology (2) Space (3) Earth Sciences (4) Atomic Energy (5) Environment, Forest and Climate Change
6.	Committee on Transport, Tourism and Culture	(1) Civil Aviation (2) Road Transport and Highways (3) Shipping (4) Culture (5) Tourism
7.	Committee on Health and Family Welfare	(1) Health and Family Welfare (2) Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH)
8.	Committee on Personnel, Public Grievances, Law and Justice	(1) Law and Justice (2) Personnel, Public Grievances and Pensions

Part II

9.	Committee on Agriculture	(1) Agriculture and Farmers Welfare (2) Food Processing Industries
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Sl. No.	Name of Committee	Ministries/Departments
		(3) Fisheries, Animal Husbandry and Dairying
10.	Committee on Information Technology	(1) Communications (2) Electronics and Information Technology (3) Information and Broadcasting
11.	Committee on Defence	Defence
12.	Committee on Energy	(1) New and Renewable Energy (2) Power
13.	Committee on External Affairs	External Affairs
14.	Committee on Finance	(1) Finance (2) Corporate Affairs (3) Planning (4) Statistics and Programme Implementation
15.	Committee on Food, Consumer Affairs and Public Distribution	Consumer Affairs, Food and Public Distribution
16.	Committee on Labour	(1) Labour and Employment (2) Textiles (3) Skill Development and Entrepreneurship
17.	Committee on Petroleum and Natural Gas	Petroleum and Natural Gas

Sl. No.	Name of Committee	Ministries/Departments
18.	Committee on Railways	Railways
19.	Committee on Urban Development	Housing and Urban Affairs
20.	Committee on Water Resources	Jal Shakti
21.	Committee on Chemicals and Fertilizers	Chemicals and Fertilizers
22.	Committee on Rural Development	(1) Rural Development (2) Panchayati Raj
23.	Committee on Coal and Steel	(1) Coal (2) Mines (3) Steel
24.	Committee on Social Justice and Empowerment	(1) Social Justice and Empowerment (2) Tribal Affairs (3) Minority Affairs

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