

PARLIAMENTARY FORM OF DEMOCRACY

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Introduction:

Parliamentary form of government is a type of democratic government. It basically implies a body of elected representatives formulating laws on behalf of the citizens. It was a consequence of the Glorious Revolution of Britain in 1688 after which absolute monarchy was replaced by a limited monarchy/ India has adopted the parliamentary form of government from her colonizer.

This form of government may itself vary. It may be a unicameral or bicameral parliament, a unitary or federal government, and also a mono party, bi party or multi-party democracy. The other predominant form of democracy is the presidential form of democracy. Other than this, governments may also spring from dictatorships, monarchies, aristocracies and such.

In parliamentary governance the executive derives its powers from the legislatures. Also the head of state is a nominal authority whose power is submissive to that of an independent *head of government*. This head of government must also be directly tied into the parliament. This is in contrast to the Presidential model. (There are exceptions to this dual head rule too, such as in Republic of South Africa.)

Sovereignty is one the basic features of democracy and hence apply to parliaments as well. Japan, France, Australia and China are all examples of parliamentary forms of government.

Areas Covered:

This project shall start with the British model of Parliament; its origins and ingredients. Next all major forms of government are compared together, and a conclusion of the ideal form is drawn, followed by whether there is any possibility for the current Indian parliamentary government to change into some other form of governance.

(The term government is technically used to refer to the executive or implementing organ of the state. This term has been avoided here as while in both Britain and India the bodies of parliamentary legislature and the intrinsic executive are closely affiliated and intertwined, here the parliamentary form of governance, or this particular mode of legislature as an organ of the state, alone, is studied.)

The various legislative assemblies and councils established under the many 'Government of India' Acts shall not be dealt with.

British Antecedents:

British parliamentary form of democracy has many quintessential features but most of these devolve from constitutional conventions and established practices with no firm basis or origin. Thus it is difficult to cite sources that determine these practices and legitimacy has usually been acquired only with passage of time! (There is no written constitution in Britain.)

The parliamentary form of government was first globally seen after the Glorious Revolution in Great Britain in the year 1688. Here the power of the monarch was diluted to a limited status and power was thrust onto the hands of the representatives of the peoples.

The British parliament is seated at Westminster, and so the parliamentary bicameral model eschewed in most commonwealth nations is referred to as the Westminster model.

Here there is the executive head of state who legally holds executive power and applies those in a ceremonial manner. The British monarch, King or Queen, basically fill this role, as well as their agents, the governors-general in their colonies.

The other executive supremo is the head of the government and is called the prime minister.

He is appointed by the head of state but constitutional convention mandates that he be supported by a **majority in the legislature/parliament**. This is typically the **head of the party** in the assembly that has a simple majority.

The parliament was set up in 1707 by the Treaty of Union and based on the parliaments of England and Scotland.

The parliament of England gradually developed from the royal aristocratic feudal council, and over a millennium removed power from the monarch. The revolution noted above was the final step that caused the monarchy to be a constitutionalized affair.

Under the parliamentary system the cabinet and the ministries, which form the government, are **collectively responsible** to the House itself.

An opposition is also required to fulfill the many roles allotted to it in a parliament, and a head of the opposition is also required. This is the party with the second greatest number of votes.

The voting system employed for members of the legislature is called **First Past The Post**. Here a majority is not needed and in each constituency the candidate with most votes win. This system receives mixed criticism.

The United Kingdom follows **bicameralism**. This means that there are two houses that constitute the parliament.

There is a lower house and an upper house. The lower house is directly elected and is more powerful. It can at any time dismiss the government itself and **dissolve** the parliament.

These houses are respectively known as the House of Commons and the House of Lords. Each house is presided over by a speaker who is a former member of the majority party. While currently a rule of law prevails in the United Kingdom, members of former feudal bodies as well as spiritual bodies such as the clergy are appointed by the Queen based on the commands of the government into the House of Lords. (This House of Lords doubled up as the apex judicial body.)

One difference between India and Britain is that the right to constitute the government and ministers is reserved only for members of the House of Commons, in the UK, whereas in India even the Upper House members could be ministers.

The house of commons is elected by regular elections once every five years.

In fact it was until a couple centuries ago the House of Lords that was primordially powerful. This changed only with the advent of greater and greater democracy, to the extent that commonwealth nations were directly derived with the lower house in a greater seat of power.

Also, the British follow a bi party system wherein there are only two parties involved in the race to form majority in the legislature. They are the Liberal Party and the Labor Party.

While the oaths of parliament members and government members are administered by the head of the state, that is, the monarch, he or she must operate on the guidelines of the leading party.

A major practice that was incorporated post mortem of monarchs William and Anne was that the parliament need not be automatically prorogued with death of the lifetime sovereign or monarch.

There are various methods of passing and introducing different types of bills too, which become laws when passed.

The parliament bestows on its members **privileges** such as immunity from cases of defamation, so that they could speak their will according to their conscience.

Further the parliament could **strike discussions off the minutes** or the stenograph of the proceedings inside it.

According to Blackstone, these privileges are large, indefinite, and based on parliamentary will!

Privileges basically include freedom of speech, freedom from civil arrest, (erstwhile criminal arrest too was immunized), etc.

While the monarch has absolute veto over all legislations, (to affirm or deny passage of bills), ever since Queen Anne's reign this is a mere formality and assent cannot be denied!

Comparison between British And Indian Styles:

While the Westminster model is heavily caught in the Indian model, there are fundamental differences. The Westminster model is entirely conventional and hence unstable. It is not the modern scripted civil law of India. The Great Britain lacks a specified grund norm and hence is easily volatile. India on the other hand has a supreme law of the land codified into the constitution and hence validity of state actions are drawn from a much more specific source.

More intrinsically, the president is also a constitutional post in India. The head of the state is elected in a republic manner, that is to say, elected by citizens, whereas the monarch of Britain is born in a royal family and constitutionally *limited*.

Another major change in the Indian form of administration is that far greater number of points of view are incorporated, and any number of parties and independent candidates may contest for elections. Britain however has been a biparty system with just the liberal party and the labor party. Further it is a small nation with a unitary set up whereas India is federal.

Thus the parliament has lesser power overall and state legislatures have their own autonomy here, whereas only local governments thrive under the British parliament.

There are many other quaint practices in Britain such as the feudal eligibility for the Upper House. In India the Upper House exists for two reasons as envisioned by the Constituent assembly: providing veteran political advice to the hot blooded youth acting in unified haste in the House of the People, and to represent the States.

The queen may also violate the rule of law enshrined in the unwritten British constitution to small privileged levels, such as constituting social privileges and orders like Knightship. However holding any non-academic and non-military titles are banned in India.

There is also greater separation of powers in India. As the Frenchman Montesquieu says, no constitution is a constitution without a separation of powers. As the legislature is being studied in this project, its involvement with the other two organs must also be delved into.

In Britain the House of Lords until recently in 2009 had doubled up as the apex court whereas the legislature would never perform an *entirely* judicial function in India.

Comparison with Other Forms of Government:

It has commonly been conceded by scholars that democracy is better than more efficient and speedy governance forms like dictatorship, monarchy, aristocracy etc. This is because of greater representation leading to greater awareness of the needs of the peoples, as well as slower and well informed well debated decisions.

This slow and steady pace has globally been recognized as the best method of administration.

However there is more than one type of democracy. Even within parliamentary governance we have seen other forms of State agency such as unicameral and bicameral assemblies, unitary and federal governments and monoparty, biparty and multiparty governments.

In china the Monoparty system is followed and only members of the Communist party may contest with each other and against each other to gain parliament seats. Thus no ideological differences could be incorporated without it being a farce.

On the front of number of parties there is the USA and the UK both of which are biparty systems. Here an opposite stance could be made to the government but no more than two ideologies could be marked. This does admittedly prevent the monopoly of power in a particular party high command, but any radical new ideologies may not be able to develop. It is either a leftist-rightist struggle, a centrist-leftist as may be seen in Britain between the Liberals and the Labor Party, or the classical jurisprudential contrast between progressives and conservative-nationalists, as seen in the United States' example of Democrats and Republicans. Moreover all other ideological divides are bound to align with these basic polarities so they could oppose each other.

However the case in india is very different. One need only look at the divides in each party throughout the last few decades to see a diversity. The centrist Indian National Congress had split sixteen years ago into the INC and the National Congress Party. Similarly the Communist

Party had split into the Communist Party of India and the more modern and popular Communist Party of India-Marxist. While half these instances may indeed be power games, maneuvers and farces, there are also often pure ideological issues involved. Furthermore it is known that in 2014 it was after many years that in the Union government a single party was able to come to power. Until then government was often formed by coalitions with regional parties like the Bahujan Samaj party, Samajwadi party, Trinamool Congress, AIADMK, DMK, etc.

While on the one hand this scenario points to a weak and divided government, struggling under the weight of regional pulls and divides, on the broader perspective it is conceded that this is the true spirit of democracy. There are so many contrasting view points, regional fronts and diverse habitats of people that so many parties compete heavily for power and there is a rich incorporation of these variegated view points, even if at the cost of promoting red tape and losing in efficiency.

On the front of federalism it is known that in a large nation like India the unitary government that may have been practicable in other nations would not be practicable in India. There are also various levels of federalism, and to maintain a strong union in what was a diverse and pieced-together nation, a unitary bias does exist, but in practice pure federalism is a myth anyway and Indian federalism has shown to work more autonomously than on paper and on rules.

With regard to bicameralism the Constituent assembly debates show us the need to incorporate state government views in the central government. This develops the democracy. The practice has been followed in non-parliamentary democracies.

The other major form of democracy is presidential form. Here the head of state and the head of government are all one person. There is much clamor for this form as the strongest and ‘best’ nation has this type of governance; the United States of America.

However it is the opinion incorporated in this paper that this is merely wishful thinking aimed at the aspect *not* involved locally, in other words, a desire for the absent.

This is how the American Model works. Both the parties first have various candidates contend internally for the title of presidential candidate. Delegates of the party representing their constituencies vote within the party. The shortlisted couple of competing persons campaign in every constituency allotted for the National Congress (Central Legislative Assembly) and majority wins within a state guarantees the victory of a state or a vote. Thus among the fifty states majority winner becomes the head of government and state.

Thus a person need not win a maximum number of constituencies or individual votes to become president, as states vary in size. (This is how retards like George.W.Bush came to power.)

Further each of these constituencies has candidates from each party contesting for the post of congressperson. Other than this many of these constituencies are clubbed to form a bigger constituency which is part of the smaller body known as senate. These senators are also directly elected.

This bicameral process is also repeated in the autonomous dual citizenship based states, where the governor is similar to the President of the United of States at a state level.

The entire executive consists of the president's staff selected from the civil service, which last century included the ban of people related to the president.

All bills require the veto of the president. However this is more than the mere formality which it is in India. The vetoed assent or negation by the president is entirely his (or her) choice. While this is efficient, and decisions are based on the knowledgeable and informed competent civil service officials, this is less democratic. This is also hasty and not based on healthy debating the way Indian law making is.

Further in India the executive is even more tied to the will and good favor of the legislature as it is to a great extent a part of the legislature. Also the ideal is that civil servants draft and come up with ingenious ideas but the decision making alone should be done according to the instinct and informed choice of a representative of the people alone. Also so much power should not lie in a single person, as Pandit Nehru and Mr. M.C.Setalvad pointed out to Rajendra Prasad.

While in some cases the legislative control in the US have lead to evils not being stopped by a well-meaning executive, such as Barack Obama's movements against the war camps and detainee torture at Guantanamo Bay, but overall it is not as democratic an institution as the Indian model.

At any rate the American constitution is more stringent and not need-specific like the Indian version, and still propagates its own version of theocracy such as with regards homophobia and capacity. In fact there have been babies and dead persons as mayors in the United States!

At any rate the constituent assembly held that direct election of a president subservient to the executive which in turn was subservient to legislature was both anomalous and roundabout, and heavily expensive.

Possibility of Change of Mode of Governance:

While most nations have some form of basic norm that validates all other actions of the state, the written constitution of india is particularly rigid. Thus the rule of law is ensured as well as constitutionalism. The parliamentary form of democracy is explicitly laid down in the constitution as seen in all these provisions. Article 368 deals with the procedure of amendment to the constitution. Even the most stringent amendments are possible if ratified by two thirds majority in both houses and ratification by half the states. Keshavananda Bharathi case is one of the most important cases in Indian legal political history that defines the non-amendable basic structure of the constitution, to an extent.

This basic structure consists of ingredients like rule of law, separation of powers, preamble, judicial review, federalism, secularism, sovereign, democratic, republican structure, fundamental rights, dignity of citizens, integrity of nation, equality in justice, balance between fundamental rights and directive principles, parliamentary system of government and so on. Since the definition ends with an et cetera of sorts india still does not have a perfectly defined basic

structure. However the existing points are to be made inviolable and as seen here the parliamentary form of democracy too is a part of the unamendable basic structure.¹

Having said that there are many commonwealth nations that had once taken after the commonwealth style of Westminster governance and then changed their model. For instance the Republic of South Africa has a combined head of government and state, who is subject to the parliament, thereby a cross between the British and American model. Japan too had a mixed system of Westminster and Reichstag models.

At any rate the question arises regarding whether a formal statutory change is required.

For instance the Union recently issued guidelines to the courts that any person attempting suicide would be de facto considered as insane. Thus while the parliament did not go to the pains to repeal the statutory provision penalizing attempt to suicide² at the same time it made it an obsolete provision by removing one of the basic elements or ingredients of crime from an offence. This sort of attitude change bypasses the need to be aware of unconstitutionality, colorable legislation and such.

For instance Narendra Modi, the current Prime Minister, may have done many unconstitutional things.

The Constitution proclaims that the head of government must not be directly elected by the people but is merely the head of the majority party.

However Modi announced himself as the 'prime ministerial candidate'. Thus without the selected candidates of his party voting for him after formation of government, he and the party high command announced the leadership they intended to carry on post victory. Similarly the party members distributed the message across the nation to 'Vote For Modi', when practically

¹ 1973 4 SSCC 225

² S 309 IPC

only persons with registered right to vote in the two constituencies he stood in could do this, ie, vote for him in his mere existing capacity *as an M.P.*

Further, the president is the real head of state. Even with nominal powers, he or she is the Commander in Chief of the armed forces and speaks with the nation's voice to all foreign authorities. It would seem that he or she has the primal obligation and authority to speak with heads of states internationally and convey the nation's statuses.

However this duty too has been filled in by the prime minister Modi who travels across nations quite a lot of times every year and actively campaigns for foreign investment as well as investment by Foreign nationals.

While these measures may make a strict legal scholar cringe, at the same time it causes overall development, and has through the publication of a *persona* provided better economic boosts to the nation, as well as a sense of unity. Thus legal procedures may be bypassed by realistic means as well.

Conclusion:

Thus this paper concludes with the notion that while the current convoluted system may cause a lot of red tape it is the epitome of democracy and is also the most suitable form of governance.