

AGENDA CONTROL IN THE INDIAN PARLIAMENT AND THE IMPACT ON ITS OVERSIGHT FUNCTION – ANALYSIS AND EVIDENCE

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Separation of powers is understood as the diffusion of powers among different branches of the government, with each branch acting as a check on the other. This principle is considered an anti-thesis to totalitarianism, preventing the absolute concentration of power and thus protecting liberty. The Cabinet-style parliamentary form of government, with its genesis in Britain, fused together the executive with the legislature. This resulted in powerful executives and weakened legislatures with limited oversight capabilities. As institutions evolved over time, internal rules and procedures also evolved both as constraints and enablers of executive dominance, by distributing the powers of agenda control. Agenda control, understood as the power to decide what gets on the agenda, is a contested notion between the executive and the legislature. While there have been studies exploring agenda control in the context of the United States Congress and parliaments in several European countries, a similar study in the context of the Indian Parliament is yet to emerge. This paper attempts to examine the rules and procedures of the Indian Parliament to determine who controls the agenda, and what impact this control has on the oversight function of Parliament. For this purpose, the paper will limit itself to procedures pertaining to convening and proroguing a session, deciding the time and agenda for legislative discourse, and controlling deliberations on financial matters. The paper

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ends by making some recommendations on the reform of these rules and procedures, so as to ensure a greater sharing of the power of agenda control between the executive and the legislature in India.

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I. INTRODUCTION

On September 14, 2020, the first day of the Monsoon Session of Parliament, a motion came up for vote in the Lok Sabha.¹ The motion, moved by the Minister of Parliamentary Affairs, proposed that owing to the pandemic, there was a need to maintain distancing and to keep the presence of government officials and others within Parliament precincts to a minimum. Thus, it was proposed that Starred Questions² and Private Member Business be suspended for the session. The government had earlier proposed that no Question Hour be conducted during the Monsoon Session. The Speaker of the Lok Sabha, resorting to his residuary powers,³ had directed that no time be allotted for Question Hour.⁴ Later, Unstarred Questions⁵ were permitted as the government faced backlash from Members of Parliament (‘MPs’), mostly belonging to the opposition.⁶

¹ Lok Sabha Debate 14 September 2020, motion by Shri Prahlad Joshi <[http://loksabhadocs.nic.in/debatetextmk/17/IV/14.09.2020\(a\).pdf](http://loksabhadocs.nic.in/debatetextmk/17/IV/14.09.2020(a).pdf)> accessed 20 July 2022.

² Starred Questions are orally answered on the floor of the House during Question Hour, the dedicated hour for answering questions in both Houses of Parliament. It is the first hour of sitting in the Lok Sabha and the second hour of sitting in the Rajya Sabha.

³ *Rules of Procedures and Conduct of Business in Lok Sabha* (16th edn) r 389 (Lok Sabha Rules of Procedure). This rule provides that all matters, not specifically provided for in the Rules, shall be regulated in such manner as the Speaker directs.

⁴ Lok Sabha Debate 14 September 2020, announcement (ii) by the Speaker <[http://loksabhadocs.nic.in/debatetextmk/17/IV/14.09.2020\(a\).pdf](http://loksabhadocs.nic.in/debatetextmk/17/IV/14.09.2020(a).pdf)> accessed 20 July 2022.

⁵ Unstarred Questions are responded to in writing. They are not discussed during Question Hour. So, even if Question Hour doesn’t happen due to sudden suspension, written responses will still be made available to MPs.

⁶ Moushumi Das Gupta, ‘Modi govt climbs down on Question Hour, will allow “unstarred questions” in monsoon session’ (*The Print*, 2 September 2020) <<https://theprint.in/india/governance/modi-govt-climbs-down-on-question-hour-will-allow-unstarred-questions-in-monsoon-session/494523/>> accessed 20 July 2022.

Several MPs of the opposition spoke against the motion, arguing that parliamentary questions are instruments to seek accountability from the government. Manish Tewari, Lok Sabha MP from Anandpur Sahib, asserted that while the Speaker has the power to pass such directions under Rule 32 of the Rules of Procedure and Conduct of Business in Lok Sabha, such direction can be issued only if the House unanimously agrees on a motion.⁷ His argument, which was summarily dismissed by the Speaker, was that the House must pass the motion first before the Speaker may suspend Question Hour, and not the other way round. This is because MPs are required to submit notices of questions in advance.⁸ With the Speaker suspending Question Hour without seeking the approval of the House, MPs were not allowed to submit their notices, making the motion moved later a mere formality. Even if the motion had failed, Question Hour would practically still not have been held as MPs were prevented from submitting their notices in advance.

Asaduddin Owaisi, Lok Sabha MP from Hyderabad, asserted that the motion was “weakening the theory of separation of powers, which is part of the basic structure of our Constitution.”⁹ He further implored the Speaker not to “allow the executive to encroach on the territory of the legislature.”¹⁰ He also demanded a division,¹¹ which was denied by the Speaker.

The motion was ultimately passed by voice vote. The Minister of Parliamentary Affairs asserted that the leaders of all major parties were consulted before the decision was taken, a claim that a leader of the largest opposition party refuted. Nevertheless, in effect, the executive unilaterally suspended the privilege of the legislature to question the former on the floor of the Parliament. This debate is a striking example of how the legislature and executive contest each other to decide how the time of parliament is to be apportioned. It further exemplifies how the government exerts greater agenda control powers through the office of the Speaker, emaciating the oversight function of parliament.

The Indian Parliament is a legislative institution of representative accountability and oversight. The Constitution envisages three fundamental functions

⁷ MN Kaul and SL Shakhder, *Practice and Procedure of Parliament* (7th edn, Lok Sabha Secretariat 2016) 500.

⁸ As per Lok Sabha Rules of Procedure (n 3) r 33 and *Rules of Procedure and Conduct of Business in the Council of States* (9th edn) r 39 (Rajya Sabha Rules of Procedure), fifteen days’ notice is required to be given for questions.

⁹ Lok Sabha Debate 14 September 2020, speech by Shri Asaduddin Owaisi <[http://loksabha-docs.nic.in/debatetextmk/17/1V/14.09.2020\(a\).pdf](http://loksabha-docs.nic.in/debatetextmk/17/1V/14.09.2020(a).pdf)> accessed 20 July 2022.

¹⁰ *ibid.*

¹¹ Any Member of Parliament can demand division challenging the decision of the Speaker/Chairman regarding a voice vote. Division or recorded vote may be conducted by operating the automatic vote recorder or through division slips.

for Parliament: executive accountability, law-making, and financial oversight. The Constitution provides for all those subject-matters on which Parliament is competent to make laws¹² and the procedure for law making.¹³ It ensures executive accountability by making the Council of Ministers collectively responsible to the House of People,¹⁴ and it provides for procedures in financial matters,¹⁵ empowering the House of People to assent, refuse to assent, or modify any demand for grants for expenditure to be incurred from the Consolidated Fund of India.¹⁶ However, owing to the near-complete agenda control powers of the executive, the Indian Parliament is prevented from effectively discharging these functions. This paper examines three broad yet fundamental procedures in detail, with evidence on how the executive's agenda control through these procedures impedes Parliament's oversight function. These procedures are related to the convening and prorogation of parliamentary sessions, decisions on legislative agenda, time, and discourse, and the exercise of a check on the executive's budget. These three procedures respectively correspond to the three fundamental functions of Parliament identified above, and therefore, are the focus of the present study.

The central argument in this paper is that the rules and procedures of the Indian Parliament facilitate agenda control by the executive, thereby negating Parliament's oversight function. However, this executive control through rules and procedures is an extension of the structural defects inherent in the Cabinet system of our parliamentary set-up. The Cabinet system, an innovation of the British parliamentary form of government, fuses the executive and legislature in one body. This has the impact of diluting the institutional separation of powers, and weakening the functional separation which is required to ensure an effective check by the legislature on the executive. Thus, in exploring the central argument, this paper will first examine the impact that rules and procedures of Parliament have, and ought to have, on the executive in context of the functional separation of powers between the organs. The paper will then undertake a theoretical deliberation on the concept of agenda control, and lay down the principles which will be applied in this paper. Finally, it will critically analyse three broad, fundamental rules and procedures of the Indian Parliament, and study their impact on its oversight function through evidence. The paper will conclude by recommending some procedural reforms which enable greater sharing of the power of agenda control between the legislature and the executive.

¹² Constitution of India 1950, art 246 read with sch 7.

¹³ Constitution of India 1950, arts 107 – 111.

¹⁴ Constitution of India 1950, art 75(3).

¹⁵ Constitution of India 1950, arts 112 – 117.

¹⁶ Constitution of India 1950, art 113(2).

The paper also suffers from some limitations. So far, the concept of agenda control hasn't been analytically explored in the context of the Indian Parliament. Therefore, the paper refers to literature on agenda control in Western democracies and juxtaposes the same with data and evidence from the Indian Parliament. However, given that the Indian Parliament is designed, elected, and functions differently from parliaments in Western democracies, the paper does not undertake a comparative analysis. Instead, it proposes a framework to study agenda control as it applies to the unique Indian context. The paper also does not claim that the proposed framework is the only or the best framework possible - it merely initiates a proposition that can be further studied through different dimensions.

Another limitation of this paper is the lack of a standard format of the data and evidence relied on for supporting and corroborating the arguments advanced. The paper uses a variety of evidence: descriptive examples such as the one discussed in the introduction, historical data over different periods of time and recent data from a specific time period, particularly the last decade. The reason for such a mixed evidence approach is that the available data on the functioning of Parliament does not easily lend itself to a study on agenda control. For instance, though data is available to show that the number of days that the Indian Parliament is in session in a year has progressively reduced, the paper views this from the perspective of the systematic exertion of greater agenda control by the government and reinforces this conclusion by providing examples from recent years. Therefore, both data and examples which indicate elements of agenda control are used to advance the arguments in this paper.

The third limitation of this paper is that it does not dwell in great detail on the question of politics, i.e., that political actors are bound by different considerations than their constitutionally prescribed roles and responsibilities, though this issue is referred to wherever warranted. For example, some studies on Parliament, which are also referred to in this paper, emphasise the fusion of party and the State as one of the reasons for weak legislatures and executive overreach. This aspect is tangentially explored in this paper as well. The paper confines itself largely to a study of how the structure, rules, and procedures of the Indian Parliament enable greater agenda control by the government. However, in limiting its scope in this manner, the paper does not negate other reasons and causes, including political reasons, which weaken parliaments. Since the problem of agenda control is multi-dimensional – structural, political, and perhaps even sociological and ideological - solutions also need to be multi-dimensional. This paper focuses only on the structural causes and recommends structural solutions, but it is open to future studies to explore other dimensions as well.

II. SEPARATION OF POWERS IN THE PARLIAMENTARY FORM OF GOVERNMENT AND THE IMPACT OF RULES AND PROCEDURES

The development of the principle of separation of powers in British jurisprudence was premised on the idea of limiting the government's power to protect individual liberty. MJC Vile, in his authoritative text titled *Constitutionalism and the Separation of Powers*, argues that the emergence of three separate branches of government in Britain was a response to the understanding that the "diffusion of authority in different centres of decision-making is the antithesis of totalitarianism and absolutism."¹⁷ This institutional arrangement of three branches of government has been immortalised in the works of Montesquieu, who observed that if there is a concentration of the legislative and executive powers in the same person or same body, "there can be no liberty."¹⁸

However, Vile argues that what became prevalent in Britain was not a 'pure theory' of separation of powers.¹⁹ A 'pure theory' posits that for the maintenance of political liberty, the government must be divided into three branches – the executive, the legislature, and the judiciary, with each branch performing a separate function – the executive, the legislative, and the judicial. Further, the persons who perform these functions must be kept separate and distinct, and no branch should encroach upon the functions of the other branches.²⁰ It was presumed that if this separation was achieved, each branch would be a check on the other.

Instead, the central theme in British jurisprudence was 'harmony'. Checks were sought to be applied in a manner so as to achieve a balance between the government (here, the executive) and parliament (legislature),²¹ through the Cabinet system. This came to be considered the 'efficient secret' of the English Constitution. By default or design, it led to the 'nearly complete fusion of the executive and legislative powers',²² arguably failing the Montesquieuan test. The underlying idea of the Cabinet system was that it is not practically possible to separate the functioning of the different branches of government without affecting the efficiency of administration, and some 'cooperation and

¹⁷ MJC Vile, *Constitutionalism and the Separation of Powers* (2nd edn, Indianapolis, Liberty Fund 1998) 16.

¹⁸ Charles de Secondat, baron de Montesquieu, 'The Spirit of the Laws', *Great Books of the Western World* (1952) 38 as quoted in Edward Hirsch Levi, 'Some Aspects of Separation of Powers' (1976) 76 *Columbia Law Review* 371, 373.

¹⁹ Vile (n 17) 59.

²⁰ *ibid* 14.

²¹ *ibid* 234.

²² Walter Bagehot, *The English Constitution* (Paul Smith ed, Cambridge University Press 2001) 8.

coordination' between different branches is required for the state to function in a cohesive manner.²³

The Cabinet-style parliamentary system also came to be adopted in India. It enabled some MPs, usually of the same party that is in majority in parliament or with the same political views as the party, to perform the duties of the executive. This form of government had its share of supporters and critics in the Constituent Assembly, and intense debates preceded it being enshrined in the Constitution. It was after two years of deliberation that in November 1948, Dr. BR Ambedkar, the Chairperson of the Constitution Drafting Committee, tabled the draft Constitution for consideration, proposing the parliamentary form of government for India.²⁴ Dr. Ambedkar differentiated the parliamentary system from the presidential form prevalent in the United States of America, and evaluated the two systems on two choices— stable executive or responsible executive. These were, in his view, mutually exclusive.

According to Dr. Ambedkar, the system in the United States of America and the Swiss system are more stable since the executive is not dependent for its existence on a majority in legislature and thus, cannot be dismissed by the legislature. However, he argued that the British Parliamentary system was more responsible even though less stable, as the executive must resign if it loses the confidence of the majority in the legislature. He also argued that in the presidential system, the responsibility of the executive is assessed periodically through elections while in the parliamentary system, it is assessed both periodically through elections and daily through questions, resolutions, debates, no confidence motions, etc. So, he averred, the draft Constitution preferred a responsible executive over a stable executive, and recommended a parliamentary form of government.

A debate that happened in the Constituent Assembly on the tendency of executive dominance in parliamentary forms of government is instructive. A member moved an official amendment to include the separation of powers as a principle in the Constitution.²⁵ The amendment was supported and criticised in equal measure.²⁶ The member moving the amendment argued that a complete

²³ Eoin Carolan, *The New Separation of Powers, A Theory for the Modern State* (Oxford Scholarship Online 2010) 19.

²⁴ Constituent Assembly of India Debates (Proceedings) 4 November 1948, vol 7 <https://www.constitutionofindia.net/constitution_assembly_debates/volume/11/1949-11-25> accessed 20 July 2022.

²⁵ Prof. KT Shah moved the amendment, "There shall be complete separation of powers as between the principal organs of the State, viz, the Legislative, the Executive and the Judicial." See Constituent Assembly of India Debates (Proceedings) 10 December 1948, vol 7 <<http://loksabhaph.nic.in/Debates/cadebatefiles/C10121948.html>>.

²⁶ *ibid.* For those opposing the Parliamentary form of government, see the arguments made by Kazi Syed Karimuddin and Prof. Shibban Lal Saksena, who also said that though it was too late to now consider the Presidential system but through the discussion the House got an

separation between the executive and the legislature is essential for safeguarding individual liberty, civil liberties, and the rule of law. Others argued that the legislature cannot remain independent and becomes submissive to the executive. Concerns of the opposition being neglected and crushed were also expressed.

Nevertheless, the parliamentary form of government came to be adopted in the hope of creating a responsible executive. In that regard, it is pertinent to note the importance ascribed in Dr. Ambedkar's speech to routine procedures of parliament (like questions, debates, and motions) in extracting accountability from the executive and making it responsible to the legislature. In operationalizing parliament's oversight on the executive, these procedures and the rules governing them are crucial, as they provide for the 'daily and periodic assessment' of ministerial responsibility.²⁷

The Global Parliamentary Report 2017 ('GPR') produced by the Inter-Parliamentary Union and the United Nations Development Programme, which is based on data from one hundred and three parliaments and surveys of parliamentarians from one hundred and twenty eight parliaments, notes that parliaments are able to conduct effective oversight when they have the mandate to make it happen, as derived from either the Constitution or laws and rules of procedure.²⁸ The GPR further highlights that oversight-seeking instruments such as questions and committees create a mindset among governments that they may be required to justify their actions, which will not go uncontested. In the absence of such instruments, there could be inefficient policies and lack of transparency.²⁹

The rules and procedures enable parliaments to exercise oversight over the executive because procedures act as constraints on the executive. It has been argued that though a majority government has the power to determine policy outcomes, it must act through parliament and conduct itself according to the rules of procedure.³⁰ These procedures may be amended to suit the government, such as the gradual expansion of the powers of the Speaker and strengthening of the control of the government on all matters in the context of

'opportunity to express its doubt as to whether we have done wisely in accepting the present system.' For those supporting the Parliamentary form of government, see the arguments made by K. Hanumanthaiya and K. Santhanam.

²⁷ Kaul and Shakhder (n 7) 11.

²⁸ Global Parliamentary Report 2017—Parliamentary Oversight: Parliament's Power to Hold Government to Account (Inter-Parliamentary Union and United Nations Development Programme 2017) <<https://www.ipu.org/resources/publications/reports/2017-10/global-parliamentary-report-2017-parliamentary-oversight-parliaments-power-hold-government-account>> accessed 20 July 2022 (Global Parliamentary Report).

²⁹ *ibid* 16.

³⁰ P Norton, 'Playing by the Rules: The Constraining Hand of Parliamentary Procedure' (2001) 7(3) *Journal of Legislative Studies* 13, 17.

the British Parliament. However, the need for modification indicates “that what previously existed was a constraint on the government.”³¹ It is thus contended that rules and procedures can counter, to some extent, the inherent potential in parliamentary systems for executive dominance.

However, the GPR report also notes that “governments jealously guard their control” over the allocation of time in parliament. It further acknowledges that the opposition must have the opportunity to “question, challenge and seek amendment to the government programme.”³² Therefore, even as procedures exist to constrain the executive and to empower legislatures to seek oversight, procedures also exist to empower executives to command control over the time of the legislature. This aspect of agenda control through procedures, to be discussed in detail in the next section, may provide the executive with superseding powers even over the procedures through which the legislature is to keep a check on the executive. Thus, the political contestation of power between the executive and the legislature also plays out through the design and application of the rules and procedures of parliament. This, in turn, impacts the ability of these two pillars of democracy to check each other.

III. AGENDA CONTROL THROUGH PROCEDURES – CONCEPTS AND IMPLICATIONS

For the purposes of this paper, agenda control is understood as control over the apportionment of the time of the legislature, which is to decide what the legislature’s time will be spent on. This is premised on the understanding that time is a finite resource that needs to be governed carefully. An elected government has a limited duration to deliver on its policy mandate, which it must undertake through the legislature. The legislature, which also comprises of the opposition, has the same limited duration to extract accountability and present alternative policy proposals. As such, the contestation between the executive and the legislature results in both claiming the right to control how the legislature’s time is spent. This is because the ability to gain or prevent access to the plenary time of the legislature is “the central source of power in democratic legislatures.”³³

In the everyday workings of parliament, agenda control manifests in controlling when, and for how long, the legislature convenes for its session, how much time is allocated every day for which business, and the power to curtail

³¹ *ibid.*

³² Global Parliamentary Report (n 28).

³³ Gary W Cox and Matthew D McCubbins, ‘Managing Plenary Time: The U.S. Congress in Comparative Perspective’ in Eric Schickler and Frances E Lee (eds), *The Oxford Handbook of the American Congress* (Oxford: Oxford University Press 2011) 451–472.

and limit debate and deliberation. Since some policy decisions such as the annual budget are very time-sensitive, agenda control is considered a necessary evil, a compromise based on the acknowledgement of the “right of the majority to govern and the right of the minorities to be heard.”³⁴ Since it is a compromise, it demands a principled approach from both the executive and the legislature to maintain this delicate balance.

Given the rule of the majority in parliamentary forms of government, it is easier for the executive to dishonour the compromise and command near-complete agenda control by exploiting procedural frameworks. For instance, for the suspension of Question Hour in the Monsoon Session of 2020, the executive resorted to the residuary powers of the Speaker before seeking the approval of the House for the same, thus reducing the latter to a mere formality. As will be explained in greater detail later, this session was convened as the country was in the grip of the pandemic, with the government pushed into a corner on its mishandling of the pandemic and its announcement of a strict nation-wide lockdown without proper preparation to deal with its outcome. The session was short in duration, and was primarily convened to seek the approval of the House on a large number of government Bills. By doing away with Question Hour and replacing it with the government’s agenda, the executive managed to exact control on the time of the legislature and evade accountability.

In a study based on some procedures applicable to the Congress of the United States of America, it was shown through experimental models that “procedures matter when the cost of transacting agreements to get around them are high.”³⁵ It was argued that parliamentary procedures affect outcomes, and that they are observed till the expected outcome is desirable and the transaction costs of negotiating and enforcing agreements to evade the procedures are low.³⁶ In the above example, observing Question Hour could have had a less than desirable outcome for the executive as it would have had to face probing questions from the legislature. Hence, it was done away with.

In parliamentary forms of government, the executive’s power to control the plenary timetable to set the agenda of every day is considered an important aspect of agenda-setting. A study of parliamentary procedures in select European countries indicates “governments effectively controlling the flow of parliamentary business” in most countries, with some notable exceptions where the legislature itself is able to determine the agenda.³⁷ In such countries,

³⁴ Herbert Döring, ‘Parliamentary Agenda Control and Legislative Outcomes in Western Europe’ (2001) 26(1) *Legislative Studies Quarterly* 145, 147.

³⁵ Kenneth A Shepsle and Barry R Weingast, ‘When Do Rules of Procedure Matter?’ (1984) 46(1) *The Journal of Politics* 206, 214.

³⁶ *ibid* 219.

³⁷ Michael Laver and Kenneth A Shepsle (eds), *Cabinet Ministers and Parliamentary Government* (Cambridge University Press 1994) 295.

legislatures find it almost impossible to get anything on the agenda, including a vote of no-confidence, the most stringent censure and check that the legislature can exercise on the executive.³⁸ In the context of the legislature demanding time to censure the government, the Rajya Sabha website notes that, “The apparent absurdity that the opposition asks for Parliamentary time to be set aside by the Government in order that the opposition may censure the Government, is not an absurdity at all.”³⁹ This is in acknowledgement of the fact that government alone cannot lay claim on the time of the legislature: the opposition also can, and must.

In another study of parliamentary procedures in Western European democracies by Döring, it has been shown that ‘executive dominance’ is a matter of agenda control.⁴⁰ This study analyses Parliamentary procedures across several indicators, some of which have been referred to for this paper as well. The study begins by looking at who controls the plenary agenda, which requires setting ‘the order of the day’, each day.⁴¹ Ranking eighteen Western European countries from higher to lower governmental control over the plenary agenda, it identifies seven variations. These range from the government alone determining the plenary agenda, to consensual agreements of party groups with the right of the majority to overturn the proposal, to the legislature itself determining the agenda.⁴² Interestingly, the study shows that countries in which the executive exercises more control over the plenary agenda are also the countries where the executive is able to exert greater control on the functioning of legislative committees and curtail debate before the final vote on a Bill.⁴³

Thus, the power of the government to control the agenda is derived, and to some extent circumscribed, by rules and procedures. In the next section of the paper, the procedures to determine the convening of a session, and deciding

³⁸ For instance, in 2018 in India, the opposition’s motion for vote of no-confidence was consistently rejected by the Speaker of Lok Sabha citing chaos and disorder in the House for several days, providing the government with an opportunity to push the Budget and Finance Bill in the House without any debate.

³⁹ Rajya Sabha Secretariat, *Practice and Procedure* (2005) <<https://cms.rajyasabha.nic.in/UploadedFiles/Procedure/PracticeAndProcedure/English/25/INTRODUCTION1.pdf>> accessed 28 July 2022.

⁴⁰ Herbert Döring (ed), *Parliaments and Majority Rule in Western Europe* (Campus Verlag St. Martin Press 1995) <<https://www.mzes.uni-mannheim.de/d7/en/publications/book/parliaments-and-majority-rule-in-western-europe>> accessed 20 July 2022.

⁴¹ *ibid* 224.

⁴² *ibid* 225.

⁴³ *ibid* 245. Some of the countries in this study have a semi-presidential system like in France, and a non-parliamentary system like Switzerland. Thus, it has been argued that the indicators used in this study are applicable to other forms of government as well. See George Tsebelis, ‘Agenda Setting and Executive Dominance in Politics’ in Steffen Ganghof, Christoph Hönnig and Christian Stecker (eds), *Parlamente, Agendasetzung und Vetospieler* (VS Verlag für Sozialwissenschaften 2009) 17.

the plenary agenda for debates on Bills and financial proposals of the government will be analysed.

IV. WEAKENING OF PARLIAMENTARY OVERSIGHT DUE TO THE EXECUTIVE'S AGENDA CONTROL - ANALYSIS AND EVIDENCE

Subject to the provisions of the Constitution, each House of Parliament may design its own rules and procedures to regulate its working.⁴⁴ Other than the Constitution and the rules and procedures adopted for a House, directions issued by presiding officers from time to time and conventions also govern the functioning of each House. In the subsequent paragraphs, a detailed analysis of three procedures will be undertaken to show how these have enabled an executive takeover of the agenda and prevented Parliament from providing an effective check on the executive. It is important to note that the procedures discussed here are not recent developments, as the discussion will show. In fact, most have regulated the Indian Parliament's working since its inception. As such, despite many innovations over the years in other rules, these procedures have withstood the test of time. Considering that these procedures enable tight executive control over the legislature, it is perhaps understandable that incentives for reform may not exist. However, what also becomes evident from the discussion is that over the years, procedures providing a balance by countering the executive's dominance with the rights of the legislature have also evolved - it is their increased manipulation in the last decade which raises concern.

For instance, in the 1990s, Department Related Standing Committees ('DRSCs') were established in both Houses of Parliament to enable the legislature to exercise oversight over the executive. Envisioned as mini-parliaments, these DRSCs were designed to enable a more focused, deeper, and largely apolitical study of legislative proposals before they were taken up for discussion in Parliament. Even though it is not mandatory to send a Bill to a DRSC, a healthy convention had developed which faced serious assault in the last decade. Research indicates that as opposed to 71% of all Bills being referred to a DRSC for study between 2009-2014, only 27% of Bills were sent to a DRSC after the regime changed in 2014. In the most recent term of the current government, since 2019, only 12% of Bills have been referred to DRSCs for study.⁴⁵

⁴⁴ Constitution of India 1950, art 118.

⁴⁵ MR Madhavan, 'Dormant Parliament, Fading Business' (*The Hindu*, 27 March 2021) <<https://www.thehindu.com/opinion/lead/dormant-parliament-fading-business/article34173052.ece>> accessed 20 July 2022.

Thus, this paper particularly focuses on data and analysis from the last decade, when the procedures or their manipulation have enabled, instead of checking, a rather aggressive form of ‘executive aggrandisement.’⁴⁶ While acknowledging the structural weaknesses of parliamentary systems to check the executive, the capitulation of the legislature before the executive since the change of regime in 2014 has been spectacular: indicated, for instance, by India’s free fall on the Varieties of Democracy Index.⁴⁷ Therefore, studying and measuring agenda control in parliament becomes a useful metric in determining the health of a democracy. Greater agenda control of the executive over the time of the legislature can be seen as both an indicator and an outcome of democratic backsliding in general. To that end, this paper also attempts to fill a critical gap in scholarship on the functioning of Indian democracy, which has not systematically and explicitly studied agenda control in the Indian Parliament so far. Finally, in the past decade, there has been a specific focus on the functioning of Parliament in the shadow of the pandemic, when the force of the executive’s agenda control through procedures was possibly felt harder than usual, and required legislatures to rise to the challenge to provide effective oversight.⁴⁸

A. The legislature can only be convened by the executive

In the Constituent Assembly, a point was raised to empower the presiding officers of the two Houses to summon a session of Parliament, instead of the President.⁴⁹ Dr. Ambedkar rejected the proposal, arguing that the President summons Parliament only when the executive government has business to place before the Houses. This was a candid admission that Parliament essentially convenes to discuss the executive’s business, providing a normative justification for the executive controlling the agenda of Parliament. Thus, as per the Constitution, the President, on the aid and advice of the Council of Ministers headed by the Prime Minister, can summon the Houses of Parliament to meet at a time deemed fit.⁵⁰

In practice, it is the Cabinet Committee of Parliamentary Affairs, headed by the Defence Minister of India at the time of writing, which considers and gives its recommendations on proposals to summon or prorogue the Houses

⁴⁶ Tarunabh Khaitan, ‘Killing a Constitution with a Thousand Cuts: Executive Aggrandisement and Party-State Fusion in India’ (2020) 14(1) *Law & Ethics of Human Rights* 49.

⁴⁷ *ibid.*

⁴⁸ This comparative study shows how executive dominance in response to the pandemic rose in many democracies, prompting some parliaments to evolve innovative ways to continue effective oversight. See Erin Griglio, ‘Parliamentary Oversight under the Covid-19 Emergency: Striving Against Executive Dominance’ (2020) 8(1-2) *Theory and Practice of Legislation* 1.

⁴⁹ Constituent Assembly of India Debates (Proceedings) 18 May 1949, vol 8 <http://loksabhaph.nic.in/Debates/Result_Nw_15.aspx?dbsl=580>.

⁵⁰ Constitution of India 1950, arts 74 and 85.

of Parliament.⁵¹ As expected, the Committee presently comprises of only Ministers.⁵² Once the Cabinet approves the dates for summoning a parliamentary session, the same is submitted to the Speaker, who then directs the Secretary-General to obtain the order of the President.⁵³ It is interesting to note that on at least two occasions in the past, in 1955 and in 1958, proposals were made to obtain and notify the order of the President to summon Parliament under orders of the Ministry of Parliamentary Affairs, instead of those of the Speaker. However, such proposals were ultimately rejected as it was argued that the Speaker should communicate with the President so as to not leave the entire discretion of summoning the Lok Sabha to the government.⁵⁴

However, the fact remains that the executive alone takes the decision on whether or when to convene a session of Parliament. As mentioned earlier, these sessions are convened only when the government wishes to place before the House business it wants to be transacted. This is the most fundamental manner in which the executive has taken control of the legislature, which has no power to convene itself and to decide its business. This is exacerbated by the absence of a fixed calendar of Parliamentary sittings, making the government's discretion absolute. In 2020, this resulted in the Indian Parliament sitting in session for thirty-three days only, a historic low.⁵⁵ The pandemic simply became a reason to aggravate a growing trend – from an average of one-hundred and twenty days in a year in the initial years of its functioning, to just seventy in the 1990s.⁵⁶ The 16th Lok Sabha (2014-19) sat for only three-hundred and thirty-one days, much lesser than the average sitting days of full-time Lok Sabhas at four-hundred-and-sixty-eight days.⁵⁷ The lesser the number of days that Parliament remains in session, the weaker is its ability to seek governmental accountability.

Other than the executive's control of the legislature, this trend of decreasing number of days for which Parliament is in session is a manifestation of the rise of political parties' influence, weakening checks and balances. In 2017,

⁵¹ Ministry of Parliamentary Affairs, *Handbook of Ministry of Parliamentary Affairs* (2019) <<https://mpa.gov.in/sites/default/files/Handbook-2019.pdf>> accessed 20 July 2022.

⁵² Press Information Bureau, *Reconstitution of Cabinet Committees-2019 - revised* (2019) <<https://pib.gov.in/Pressreleaseshare.aspx?PRID=1573622>> accessed 20 July 2022.

⁵³ Kaul and Shakdher (n 7) 191.

⁵⁴ *ibid* 192.

⁵⁵ Anuja and Gyan Verma, 'Parliament may See Historically Low Number of Sittings this Year' (*Livemint*, 25 November 2020) <<https://www.livemint.com/news/india/parliament-likely-to-have-historically-lowest-sittings-in-a-year-owing-to-covid-11606278740033.html>> accessed 20 July 2022.

⁵⁶ Trina Roy, 'If Parliament Doesn't Have the Power to Convene Itself, How Effective Can It Really be?' (*The Wire*, 22 November 2017) <<https://thewire.in/government/parliament-doesnt-power-convene-effective-can-really>> accessed 20 July 2022.

⁵⁷ Kusum Malik, Sanat Kanwar, Manish Kanadje, Vital Stats – Functioning of the 16th Lok Sabha (2014-2019) (PRS Legislative Research, 13 February 2019) <https://prsindia.org/files/parliament/vital_stats/PRS%2016th%20LS%20Vital%20Stats.pdf> accessed 28 July 2022.

through a question in Parliament, the government was asked to explain the delay in holding the Winter Session, reportedly due to Assembly elections in Gujarat.⁵⁸ The government simply stated that precedents from previous governments exist for rescheduling the Winter Session of Parliament due to elections, and that the “time and duration of each session is decided by the government keeping in view exigencies of legislative business.”⁵⁹ As political pursuits of a party in a state assembly election assume greater significance over the executive’s accountability to Parliament, Parliament’s effectiveness is dented.

In 2020, the Budget Session of Parliament was cut short and a day later, a lockdown was imposed across the nation through an executive fiat without taking Parliament into confidence. As the country grappled with many challenges, calls grew from MPs to convene the Monsoon Session as soon as possible. However, the government instead cited precedents for holding off on the session.⁶⁰ The unbridled executive power to single-handedly decide whether and when to convene a session of parliament enables the executive to avoid facing parliament and prevents debates on various issues if the executive is “uncomfortable in defending its actions”.⁶¹

Perhaps this explains why the government hesitated to respond with procedural reforms to hold sessions virtually last year when it faced severe backlash for mishandling the migrant workers’ crisis, even as the pandemic-induced lockdown led many countries to bring such procedural reforms. For instance, within a few weeks of the onset of the pandemic, hybrid sittings of parliaments (with some MPs joining virtually) were organised in the United Kingdom and Canada. The Bureau of European Parliament temporarily amended its rules, Chile amended its Constitution to permit MPs to deliberate and vote virtually, and closer home, the Maldives permitted MPs to join virtually using Microsoft Teams video conferencing technology.⁶²

⁵⁸ ‘Winter Session of Parliament likely to be delayed due to elections in Gujarat and Himachal Pradesh’ (*Firstpost*, 9 November 2017) <<https://www.firstpost.com/politics/winter-session-of-parliament-likely-to-be-delayed-due-to-elections-in-gujarat-and-himachal-pradesh-4200885.html>> accessed 20 July 2022.

⁵⁹ Rajya Sabha Debate 9 March 2019, unstarred question no. 1719 by Shri Husain Dalwai <<https://pqars.nic.in/annex/245/Au1719.pdf>> accessed 20 July 2022.

⁶⁰ CL Manoj, ‘Many precedents of Session beginning in August, September: Joshi’ (*Economic Times*, 2 July 2020) <<https://economictimes.indiatimes.com/news/politics-and-nation/many-precedents-of-session-beginning-in-august-september-joshi/articleshow/76757791.cms?from=mdr>> accessed 20 July 2022.

⁶¹ MR Madhavan, ‘Parliament’ in Devesh Kapur, Pratap Bhanu Mehta, and Milan Vaishnav (eds), *Rethinking Public Institutions in India* (OUP 2017) 75.

⁶² Maansi Verma, ‘Parliaments in the Time of Pandemic’ (2020) 55(24) *Economic and Political Weekly* 14 <<https://www.epw.in/journal/2020/24/commentary/parliaments-time-pandemic.html#:~:text=On%2023%20March%202020%2C%20the,of%20the%20Covid%2D19%20pandemic>> accessed 20 July 2022.

In India, the request from some Parliament Committees to be allowed to meet virtually and deliberate on important matters of public concern was denied.⁶³ It was this hesitancy to bring procedural reforms which led India to a race to the bottom in a comparative study on whether and how different countries showed legislative leadership during Covid-19.⁶⁴ The parameters considered in this cross-country study included the number of sittings of the legislature, how effectively the legislature exercised oversight over the functioning of governments during the pandemic as compared to its effectiveness in doing so prior to the pandemic, and the constraints created by the pandemic. The study found that India did not display any legislative leadership.

Finally, much like the power to summon, the power to adjourn and prorogue a session also vests entirely in the executive. At the time of writing, seven, consecutive Parliament sessions since the beginning of 2020 had been adjourned ahead of the scheduled dates.⁶⁵ Since a session is convened primarily for the executive's business, a session can be adjourned or extended as per the calculations of the executive, without taking the legislature into confidence. This is the position even though it results in lost opportunities for MPs to question the executive and present private member Bills, resolutions, etc.⁶⁶ The presiding officers adjourn proceedings of their respective Houses sine die (for an indefinite period of time, which in parliamentary terms refers to adjourning the House at the end of one session till the next session is convened) without taking any formal consensus from MPs on the same.⁶⁷ The President prorogues the Houses thereafter.⁶⁸

⁶³ *ibid.*

⁶⁴ Rebecca Gordon and Nick Cheeseman, 'Legislative Leadership in the Time of Covid-19' (WFD 2021) <<https://www.wfd.org/sites/default/files/2022-02/Covid-19-legislative-leadership-V5.pdf>>.

⁶⁵ The Budget Session of 2020 was scheduled to go on till April 3, 2020, but was adjourned sine die on March 23, 2020 and prorogued by the President on March 29, 2020. The Monsoon Session of Parliament which was supposed to go on till October 1, 2020, was adjourned sine die on September 23, 2020 and was prorogued on September 30, 2020. The Budget Session of 2021 was supposed to go on till April 8, 2021, but was adjourned sine die on March 25, 2021 and prorogued on March 29, 2021. The Monsoon Session of Parliament was supposed to go on till August 13, 2021, but was adjourned sine die on August 11, 2021 and prorogued on August 31, 2021. The Winter Session of Parliament was scheduled to end on December 23, 2021, but was adjourned sine die on December 22, 2021 and was prorogued on December 24, 2021. The Budget Session of 2022 was scheduled to go on till April 8, 2022, but was adjourned sine die on April 7, 2022 and was prorogued on April 8, 2022.

⁶⁶ For instance, the first session of the current Lok Sabha was scheduled to go on till July 26, 2019 but was extended on July 25, 2019 without taking any consensus from MPs, which some opposition MPs objected to. See Lok Sabha Debate 26 July 2019, Shri Adhir Ranjan Choudhury's speech <<http://loksabhadocs.nic.in/debatestextmk/17/1/26.07.2019r.pdf>> accessed 20 July 2022.

⁶⁷ Lok Sabha Rules of Procedure (n 3) r 15 and Rajya Sabha Rules of Procedure (n 8) r 257.

⁶⁸ Constitution of India 1950, art 85(2).

However, on the advice of the Council of Ministers, the President may prorogue a sitting of the House even when it hasn't been adjourned sine die. This happened in 2016 when the Budget Session of Parliament was in its recess, but was prorogued midway as the executive urgently needed to bring an ordinance, which can only happen when both Houses of Parliament are not in session.⁶⁹ The exclusive power to control the procedures to summon, extend, adjourn, and prorogue Parliament's sessions has resulted in the loss of agency for the legislature in the workings of Parliament. It is interesting to note that in the British Parliament, MPs approve recesses in the sessions and in 2019, when the Queen prorogued a session with some weeks still to go, it was struck down by the United Kingdom Supreme Court as it prevented "Parliament from carrying out its constitutional role."⁷⁰

B. Legislative agenda, time, and discourse are dictated by the executive

Once the executive decides to convene a session of parliament, the next exercise of executive discretion is in deciding the legislative agenda for a session, usually announced in advance but not always so. The tentative legislative agenda for the Budget Session of Parliament in 2021 was announced on the very day on which the session started, even though the summons for the session had been issued two weeks prior.⁷¹ The legislative agenda needs to be announced sufficiently in advance to enable MPs to prepare for 'nuanced debate' on the proposed laws and policies.⁷² However, executive influence doesn't end with deciding the legislative agenda- it also extends to whether and when any item on the agenda (legislative or otherwise) may be taken up.

A Business Advisory Committee ('BAC'), chaired by the Presiding Officer of the House and comprising of the leaders of the major parties, exists in both Houses. It decides when any government Bill or any other business may be taken up.⁷³ Though the BAC has an all-party setup, the government has a

⁶⁹ Manish Chhiber and Liz Matthew, 'Uttarakhand Crisis: Parliament Session to be Prorogued, AG Mukul Rohatgi in Nainital' (*Indian Express*, 30 March 2016) <<https://indianexpress.com/article/india/india-news-india/uttarakhand-crisis-presidents-rule-harish-rawat-floor-test-bjp/>> accessed 20 July 2022.

⁷⁰ 'Johnson's Suspension of Parliament Unlawful, Supreme Court Rules' (*The Guardian*, 24 September 2019) <<https://www.theguardian.com/law/2019/sep/24/boris-johnsons-suspension-of-parliament-unlawful-supreme-court-rules-prorogue>> accessed 20 July 2022.

⁷¹ The Budget Session of Parliament started on January 29, 2021 and the legislative agenda was announced the same day. The summons for the session was issued on January 14, 2021.

⁷² Chakshu Roy, 'This Monsoon Session is an Urgent Reminder of Long Overdue Reforms of India's Parliamentary Calendar' (*Scroll*, 17 July 2017) <<https://scroll.in/article/844068/this-monsoon-session-is-an-urgent-reminder-of-long-overdue-reforms-of-indias-parliamentary-calendar>> accessed 20 July 2022.

⁷³ For functions of BAC, see Lok Sabha Rules of Procedure (n 3) r 288 and Rajya Sabha Rules of Procedure (n 8) r 33. As per these rules, the BAC can only allocate time for items referred

greater presence and thus almost a ‘veto’ in deciding which business gets taken up when and in what form.⁷⁴ But even if a decision is reached in the BAC, it doesn’t mean that the government will stick to it. In fact, several examples exist of the government coming up with surprises, some of which will be explored below.

As per the decision of the BAC, the agenda for each day is prepared by the Secretariat of the respective Houses and presented in the form of a List of Business (‘LoB’), deviation from which is not ordinarily permitted.⁷⁵ However, there is another list called the Supplementary List of Business (‘SLoB’). No explicit rules cover the SLoB, but it can be understood as a list through which the government includes in the LoB some urgent and pressing matters. In reality, it is a procedural innovation specifically designed to aid the executive in avoiding prior notice. The author’s research shows that in the seventeen-day long Monsoon Session of 2021, as many as eleven SLoBs were brought, and six of these were to list Bills for introduction or passing. As per the rules, not only is a copy of the Bill circulated in advance before its introduction, but also some stipulated time is provided to MPs to read the Bill after its introduction and before it is taken up for discussion.⁷⁶ By springing legislation upon MPs in this manner, they are deprived of the opportunity to properly study and apply their minds to the legislation.

Research on Western European democracies indicates that executives with higher agenda control on average produce more conflictual or controversial Bills. This is because the transaction costs of law production are reduced, and the special prerogatives granted to the government incentivise it to tackle controversial Bills.⁷⁷ The experience from the Indian Parliament doesn’t seem any different. For instance, on December 28, 2017, after weeks of speculation in the media, the government suddenly circulated an SLoB in the Lok Sabha for the introduction as well as the passage of the Muslim Women (Protection of Rights on Marriage) Bill, 2017.⁷⁸

This happened again in a more extreme form on August 5, 2019. After intense troop buildup and a complete communication blockade in Jammu and

to it by the Presiding Officer, in consultation with the Leader of the House or Council, giving an upper hand to the government in closely managing the agenda of each day of sitting of Parliament.

⁷⁴ Madhavan (n 61) 78.

⁷⁵ Lok Sabha Rules of Procedure (n 3) r 31; Rajya Sabha Rules of Procedure (n 8) r 29.

⁷⁶ Lok Sabha Rules of Procedure (n 3) r 64, read with Directions by the Speaker under the Rules of Procedure and Conduct of Business in Lok Sabha, direction 19B <<http://loksabhaph.nic.in/direction/direction.pdf>>; Lok Sabha Rules of Procedure (n 3) r 74(a).

⁷⁷ Döring (n 34) 157.

⁷⁸ ‘Second Supplementary List of Business dated December 28, 2017’ (Lok Sabha Secretary General, 2018) <<http://loksabhadocs.nic.in/lobmk/16/XIII/SSLOB28.12.2017.pdf>> accessed 28 July 2022.

Kashmir, and in a bid to “catch the opposition unawares”, the government pushed through the Rajya Sabha a law to reorganise the state of Jammu and Kashmir in complete disregard of rules, procedures, and settled conventions.⁷⁹ On December 20, 2021, the Election Laws (Amendment) Bill, 2021, pertaining to electoral reforms including the linkage of the Aadhaar card with the Voter Identity Card, was similarly suddenly listed for passage after being introduced that morning amid intense protests.⁸⁰ It is imperative to note that this practice to introduce surprise legislation pits one procedure against another, i.e., procedures which provide for executive supremacy are pitted against procedures which seek to temper this by providing for checks in the form of prior circulation. However, the executive’s influence ultimately holds sway.

The executive’s hold on the legislative as well as non-legislative agenda of the House is almost complete, leaving little room for individual legislators, the opposition, or minority parties to influence the agenda of Parliament. Along with the legislative agenda, the government’s business comprising statements by Ministers, tabling of reports, moving different types of motions, etc., takes up almost three-fourth of the time of the House on any given day.⁸¹ Only the rest of the time is available for mechanisms through which MPs can question the government on its policies, have non-legislative debates, or apprise the government of urgent policy matters or issues from their constituency for redressal. For Private Members’ Business, through which MPs can propose legislation or resolutions for the consideration of the House, only two and a half hours on one day of the week are allocated, which is just 8.3% of Parliament’s weekly sitting time.⁸²

While it may be understandable that legislative business takes up a major portion of the legislature’s time, that is no guarantee of proper scrutiny or informed deliberation. For instance, between 2009 and 2014, one-fourth of all Bills passed were passed in less than thirty minutes.⁸³ More recently, during the ten-day short Monsoon Session of 2020, 59% of the time of both Houses was spent on legislative business.⁸⁴ This was almost double the average time spent by the Lok Sabha on legislative business between 2014 and 2019.⁸⁵ However, fifteen Bills cleared by Parliament in that session, accounting for more than half of the total Bills cleared, were voted on by the Rajya Sabha in

⁷⁹ Maansi Verma, ‘Diminishing the Role of Parliament: The Case of the Jammu and Kashmir Reorganisation Bill’ (2019) 54(45) EPW.

⁸⁰ ‘Special List of Business: Bill for reference to Joint Committee’ (Lok Sabha, 20 December 2021) <<http://loksabhadocs.nic.in/lobmk/17/VII/SLOB20.12.2021.pdf>> accessed 20 July 2022.

⁸¹ Kaul and Shakdher (n 7) 483.

⁸² Lok Sabha Rules of Procedure (n 3) r 26 and Rajya Sabha Rules of Procedure (n 8) r 24.

⁸³ Madhavan (n 61) 76.

⁸⁴ Manish Kanadje, ‘Vital Stats - Parliament functioning in Monsoon Session 2020’ (*PRS Legislative Research*, 23 September 2020) <https://prsindia.org/files/parliament/session_track/2020/vital_stats/PRS_17LS_Monsoon_2020_Vital_Stats.pdf> accessed 28 July 2022.

⁸⁵ Malik, Kanwar and Kanadje (n 57).

a matter of just two days, with just eight hours of debate in total.⁸⁶ Further, the author's research shows that in the Monsoon Session of 2021, the Lok Sabha cleared eighteen Bills with less than fifteen minutes of discussion each, and the Rajya Sabha cleared twelve Bills with less than thirty minutes of discussion each.

It must be remembered that the Monsoon Session of 2020 was convened when the Constitutional outer limit of six months' duration between two sessions was about to be breached.⁸⁷ The session was convened for only eighteen days, for which the government proposed a very ambitious legislative agenda of thirty-three Bills for consideration and passing in the Lok Sabha, and thirty-eight Bills in the Rajya Sabha, including eleven Ordinances that the government had promulgated in the inter-session period.⁸⁸ The eighteen-day Monsoon Session eventually ended in ten days, having cleared twenty-seven Bills, with just five of those having been studied by a Parliament Committee. The government managed to get many legislations approved in a short span of time, and hence, the session was declared productive.⁸⁹ Subsequently, the Winter Session was cancelled altogether, again citing the pandemic as a reason, with the opposition alleging that the government was avoiding responding to the demands of the protesting farmer organisations.⁹⁰ By delaying a session, convening a short session, designing the latter in a manner which maximises the government's business completion, and not providing enough opportunity to legislators to properly scrutinise Bills, the executive manages to manipulate the 'time' of the legislature to the former's advantage.⁹¹

⁸⁶ Rajya Sabha Debate 22 September 2020 DC-GS/1A/9.00 <<http://164.100.47.7/newdebate/252/22092020/Fullday.pdf>> and 23 September 2020 NBR-ASC/1A/9.00 <<http://164.100.47.7/newdebate/252/23092020/Fullday.pdf>> accessed 20 July 2022.

⁸⁷ The Budget Session of Parliament last year was cut short on March 23, 2020. The Monsoon Session was convened on September 14, 2020. As per the Constitution of India 1950, art 85(1), six months shall not intervene between the last sitting of one session of Parliament and first sitting of the next session.

⁸⁸ Lok Sabha Bulletin-II 10 September 2020 <<http://loksabhadocs.nic.in/bull2mk/2020/10.9.2020.pdf>> accessed 20 July 2022; Rajya Sabha Bulletin 10 September 2020 <http://164.100.47.5/newsite/bulletin2/Bull_No.aspx?number=60123> accessed 20 July 2022.

⁸⁹ Lok Sabha Debates 23 September 2020 <<http://loksabhadocs.nic.in/debatestextmk/17/IV/23.09.2020f.pdf>> accessed 20 July 2022; Rajya Sabha Debates 23 September 2020 <http://164.100.47.5/Official_Debate_Nhindi/Floor/252/F23.09.2020.pdf> accessed 20 July 2022.

⁹⁰ 'Government Cancelled Parliament Winter Session to Avoid Questions on its Failures: CPI(M)' (*The Hindu*, 20 December 2020) <<https://www.thehindu.com/news/national/government-cancelled-parliament-winter-session-to-avoid-questions-on-its-failures-cpim-article33378052.ece>> accessed 20 July 2022.

⁹¹ Maansi Verma and Malavika Prasad, 'Parliament Logjam Part 11: Time, the Unseen Yet Powerful Factor of Politics, is Key to Con' (*Firstpost*, 4 June 2018) <<https://www.firstpost.com/india/parliament-logjam-part-11-time-the-unseen-yet-powerful-factor-of-politics-holds-key-to-controlling-legislative-discourse-4494933.html>> accessed 20 July 2022.

Time is manipulated when routine parliamentary procedures designed to enable gradual and studied deliberations on laws and policies are seen as obstructing the executive's agenda, especially in a year of crisis. It does not come as a surprise then, that regular observers of the Indian Parliament believe that the procedural norms of Parliament began eroding in the 1970s due to, and in the aftermath of, the imposition of the Emergency.⁹² The pandemic last year accelerated the redundancy of parliamentary procedures and proper legislative scrutiny and oversight.

Since the government exercises rigid control on the business taken up in the House, the opposition may not get sufficient opportunities to set the agenda or push for discussions on issues inconvenient for the government. It has been argued that enough political incentives do not exist for opposition parties in parliament to seek everyday accountability; instead, they focus more on controversial scams and scandals.⁹³ This then results in the opposition resorting to protests and disruptions in the House which, as some MPs have argued, can be a 'legitimate tactic' in the face of an unyielding executive.⁹⁴ However, this creates a vicious circle where disruptions are used as an excuse by the executive to push for the government agenda, sacrificing other work. The current government has blamed the previous government for passing as many as eighteen Bills amidst ruckus between 2006 and 2014, even as it continues to do the same.⁹⁵ In just one Monsoon Session of 2021, as many as nineteen Bills were cleared amidst ruckus and protests by the opposition. In this context, the Rajya Sabha website notes that while the opposition has no right to obstruct a session, "in the sense of making barren or unproductive", the government must also respect the rights of the opposition as "evidence of the soundness of its parliamentary faith."⁹⁶

C. The legislature's oversight on the executive's budget, weakened

The Lok Sabha has the power to approve or disapprove demands for grants by the executive from the Consolidated Fund of India, or in other words, the budget of the government for its proposed expenditure.⁹⁷ This power is perhaps

⁹² Devesh Kapur and Pratap Bhanu Mehta, *The Indian Parliament as an Institution of Accountability* (UN Research Institute for Social Development, 2006) <[https://www.unrisd.org/80256B3C005BCCF9/%28httpAuxPages%29/8E6FC72D6B546696C1257123002FCCEB/\\$-file/KapMeht.pdf](https://www.unrisd.org/80256B3C005BCCF9/%28httpAuxPages%29/8E6FC72D6B546696C1257123002FCCEB/$-file/KapMeht.pdf)> accessed 20 July 2022.

⁹³ *ibid* 10.

⁹⁴ Arun Jaitley, 'Defending the Indefensible' (*The Hindu*, 28 August 2012) <<https://www.thehindu.com/opinion/lead/defending-the-indefensible/article3828649.ece>> accessed 20 July 2022.

⁹⁵ 'UPA Passed 18 Bills Amid Ruckus, Modi 2.0 on Same Track' (*Economic Times*, 7 March 2020) <<https://economictimes.indiatimes.com/news/politics-and-nation/upa-passed-18-Bills-amid-ruckus-modi-2-0-on-same-track/articleshow/74519650.cms?from=mdr>> accessed 20 July 2022.

⁹⁶ Rajya Sabha Secretariat (n 39).

⁹⁷ Constitution of India 1950, art 113.

one of the most stringent checks of the legislature on the executive, as the government's inability to get its budget approved by parliament is automatically considered a vote of no-confidence.⁹⁸ The procedure for the passage of the Budget is as follows – the Finance Minister presents the Budget in the Lok Sabha.⁹⁹ This is immediately followed by the introduction of the Finance Bill to give effect to the financial proposals of the government for the upcoming financial year.¹⁰⁰ The demands for grants for different ministries are tabled in the Lok Sabha,¹⁰¹ a general discussion on the Budget takes place,¹⁰² the demands for grants are referred to standing committees for detailed scrutiny, while the session adjourns for a recess.¹⁰³ The session then reconvenes, and some demands for grants are taken up for discussion and vote.¹⁰⁴ On the last day allotted for voting on the demands for grants, the remaining demands for grants are put to vote together in a process which is called the 'guillotine'.¹⁰⁵ After the vote on all demands for grants, the Appropriation Bill (to appropriate funds out of Consolidated Fund of India) is voted upon.¹⁰⁶ Finally, the Finance Bill is voted upon.¹⁰⁷

Of the three parliamentary sessions conventionally held in a calendar year, the Budget Session alone is focused on discussions related to, and the passage of, the Budget of the government. Despite that, on average, in the last fifteen years, the Lok Sabha spent only 33% of its time during the Budget Session discussing the Budget.¹⁰⁸ The number of days to be devoted to the discussion of the Budget is proposed by Minister of Parliamentary Affairs and approved by the BAC.¹⁰⁹ Thus, in effect, the time spent by the Lok Sabha to discuss the Budget is decided by the government, thus providing it with complete discretion in this regard. In the Budget Session of 2021, the government had allocated sixteen of the thirty-three days of the session to discussions on the Budget, but the Lok Sabha ended up spending only 38% of its time debating the Budget.¹¹⁰ In this time, the Lok Sabha managed to discuss only 24% of the Budget in detail before voting, which means that 76% of the Budget

⁹⁸ Kapur and Mehta (n 92) 4.

⁹⁹ Lok Sabha Rules of Procedure (n 3) r 204.

¹⁰⁰ Kaul and Shakhder (n 7) 786.

¹⁰¹ Lok Sabha Rules of Procedure (n 3) r 206.

¹⁰² *ibid* r 207.

¹⁰³ *ibid* r 331-E(1)(a).

¹⁰⁴ *ibid* r 208(1).

¹⁰⁵ *ibid* r 208(2).

¹⁰⁶ Constitution of India 1950, art 114, read with Lok Sabha Rules of Procedure (n 3) r 218.

¹⁰⁷ Lok Sabha Rules of Procedure (n 3) r 219.

¹⁰⁸ 'Parliament functioning in Budget Session 2020' (*PRS Legislative Research*) <<https://prsindia.org/parliamenttrack/vital-stats/parliament-functioning-in-budget-session-2020>> accessed 28 July 2022.

¹⁰⁹ Kaul and Shakhder (n 7) 789.

¹¹⁰ Manish Kanadje, 'Vital Stats– Parliament functioning in Budget Session 2021' (*PRS Legislative Research*, 25 March 2021) <https://prsindia.org/files/parliament/session_track/2021/vital_stats/Budget_2021_Vital_Stats.pdf> accessed 28 July 2022.

was passed without discussion, through guillotine.¹¹¹ Data suggests that in the last eighteen years, on average, 83% of the Budget has been passed without discussion.¹¹²

This is an example of the government's discretion, as it alone can decide when detailed discussions need to end and when the voting process needs to start. The Budget Session of 2018 saw the entire Budget of the government pushed for passage within an hour and amidst chaos, without any discussion, i.e., 100% guillotine. This happened as the days allotted for discussion and voting on the Budget saw disruptions related to the opposition's demand for a no-confidence motion.¹¹³ In the past, 100% guillotine has also happened in 1999-2000, 2004-05 and 2013-14.¹¹⁴ In 2018, the Finance Bill was also passed within eighteen minutes, without any discussion.¹¹⁵ In 2020, the Finance Bill was passed within an hour without any discussion, as the government curtailed the Budget Session ahead of schedule, a day before imposing a nationwide lockdown.¹¹⁶

The Finance Bill is supposed to contain the taxation proposals of the government for one year only, but it is not uncommon for governments to slip in non-financial proposals. This militates against the convention of not making permanent changes through an annual finance Bill.¹¹⁷ This prevents the oversight of the Rajya Sabha on matters which are not financial in nature, since the Finance Bill is a Money Bill for which the Rajya Sabha's approval is not needed. In 2017, the Finance Bill contained controversial non-financial provisions for restructuring tribunals, allowing anonymous political donations through electoral bonds, making Aadhaar mandatory for applying for a Permanent Account Number, etc.¹¹⁸

Demands for grants for different Ministries are studied by Standing Committees when Parliament is in recess during the Budget Session, but that may not always happen. For example, in 2011, senior MPs were busy with state assembly elections and hence no Committee scrutinised the grants.¹¹⁹

¹¹¹ *ibid.*

¹¹² *ibid.*

¹¹³ Kusum Malik, Roshni Sinha and Gayatri Mann, 'Vital Stats— Parliament Functioning in Budget Session 2018' (*PRS Legislative Research*, 6 April 2018) <https://prsindia.org/files/parliament/session_track/2018/vital_stats/Vital%20Stats%20-%20Budget%20Session%202018.pdf> accessed 2 August 2022.

¹¹⁴ Kaul and Shakhder (n 7) 796.

¹¹⁵ Malik, Sinha and Mann (n 113).

¹¹⁶ Verma (n 62).

¹¹⁷ Kaul and Shakhder (n 7) 812.

¹¹⁸ Mandira Kala, 'How Finance Bill Amendments Affect Tribunals' (*Indian Express*, 27 March 2017) <<https://indianexpress.com/article/explained/budget-2017-finance-Bill-amendments-tribunals-arun-jaitley-4586925/>> accessed 20 July 2022.

¹¹⁹ Madhavan (n 61) 90.

However, what weakens legislative scrutiny is that the Standing Committees are getting lesser and lesser time to study the demands for grants in detail. Since the Budget Session is designed with a recess in between, during which the Standing Committees study the demands for grants, curtailing the period of recess directly impacts the level of scrutiny of the Budget. A manifestation of the complete discretion of the government to design a session has been that from a forty-day recess in 2016, the recess came down to only twenty days in 2021.¹²⁰

During the recess, the Standing Committees are required to take evidence from Ministry officials regarding the performance of various schemes for which funds are sought, and even consult other stakeholders and prepare a detailed report with recommendations. These reports are then tabled once the Lok Sabha reconvenes, and are referred to by MPs when demands for grants are taken up for voting in the House. A smaller recess prevents timely and proper scrutiny by the Committees. In the Budget Session of 2021, the Standing Committee on Food, Consumer Affairs and Public Distribution, expenditure on which constitutes 7.4% of the total government Budget expenditure, submitted its report after the Budget had already been cleared, thus defeating the purpose of undertaking the exercise.¹²¹

It is interesting to note that the Constitution empowers Parliament to enact a law to regulate the procedure for the timely completion of financial business.¹²² So far, no law has been enacted and hence, the exercise of passing the Budget is governed by rules and procedures which provide the executive with an upper hand. The rules empower the Speaker to exercise “all such powers as are necessary” for the timely completion of financial business.¹²³ This, in effect, empowers the government to control the legislature’s oversight on the Budget through the office of the Speaker, as the passing of the Budget and Finance Bill without any discussion cannot happen without the permission of the Speaker. The Speaker is also the constitutional authority to certify a Bill as a Money Bill, thus legitimising the government’s attempt to bypass the Rajya Sabha by including non-financial proposals in the Finance Bill.¹²⁴ In fact, research shows that the executive is increasingly resorting to the Money Bill route: between May 2004 and September 2018, the number of Money Bills passed was 21% more than that of ordinary Bills.¹²⁵

¹²⁰ Data collected from the scheduled dates of Budget Sessions since 2016.

¹²¹ Suyash Tiwari, ‘Explained: Parliamentary Scrutiny of Union Budget 2021-22’ (*CBNC TV18*, 25 March 2021) <https://www.cnbctv18.com/politics/explained-parliamentary-scrutiny-of-union-budget-2021-22-8723451.htm/amp?__twitter_impression=true> accessed 20 July 2022.

¹²² Constitution of India 1950, art 119.

¹²³ Lok Sabha Rules of Procedure (n 3), r 221.

¹²⁴ Constitution of India 1950, art 110(3).

¹²⁵ Devyani Chhetri, ‘As Justice Chandrachud Calls Aadhaar Law “Unconstitutional”, Government Increases Use of Controversial Short Cut’ (*Bloomberg Quint*, 3 October 2018)

With respect to the Budget, it is argued that voters gain if there is a kind of check and balance system which provides the executive with “agenda setting power over the size of the Budget” and the legislature with the “agenda setting power over the composition.”¹²⁶ This results in splitting the Budget process into two stages between two bodies, but ultimately requiring both to agree. The Constitution does provide for a similar process, empowering the House of the People to alter a demand for grant by reducing its size. However, by virtue of its complete control over the Budget procedure, the executive’s control on the size as well as the composition of the Budget is total.

V. CONCLUSION & RECOMMENDATIONS

In the Constituent Assembly, a critical debate took place discussing how Parliament at that time, and the legislatures in some provinces, worked for very few days in a year. This prompted some members to demand continuous sessions, and to reduce the time period between one session and next.¹²⁷ In response, Dr. Ambedkar observed that the earlier practice may have been for the “executive to shun the legislature”, but he expressed confidence that no “executive would hereafter be capable of showing this kind of callous conduct towards the legislature.” This may have happened had a system vulnerable to executive dominance been subject to checks and balances by suitable procedures. However, when the procedures enable executive supremacy, the structural tendency inherent in the system gets aggravated, as is evident from the analysis above.

Sole executive discretion in convening a session has progressively brought down the number of days Parliament sits in a year and has dented its oversight. The executive’s tight control on the time and agenda of legislative discourse has resulted in diminishing legislative scrutiny and check by Parliament. Further, executive dominance in Budget-related matters has resulted in an increasingly high proportion of the Budget being passed without sufficient review and discussion. Even as the opposition must acknowledge the government’s right to govern, the government must also work within procedural constraints as the same provide legitimacy to its actions. In the absence of procedures or the observance of procedures which provide adequate and meaningful opportunities for the legislature to perform its responsibility of oversight, harmony and cooperation between the executive and the legislature for effective administration cannot be achieved.

<https://www.bloombergquint.com/law-and-policy/as-justice-chandrachud-calls-aadhaar-law-unconstitutional-government-increases-use-of-controversial-short-cut> accessed 20 July 2022.

¹²⁶ Torsten Parsson and others, ‘Separation of Powers and Political Accountability’ (1997) 112(4) *The Quarterly Journal of Economics* 1163, 1166.

¹²⁷ Constituent Assembly of India Debates (n 49).

Given the current state of things, what can be done? Before proposing potential reforms, it is important to rule out some reforms as well. This paper has argued that the parliamentary form of government tends to be disposed towards executive dominance, and the procedural workings of the institution reinforce that tendency. However, the examples shared within this paper have also shown that some parliamentary governments have provided the legislature with greater agenda control powers in their internal procedures, indicating the possibility of a more balanced sharing of power between the executive and the legislature within the current system. Therefore, this paper has not attempted to study or propose a pivot to a presidential form of government.

It is interesting to mention here that a study of the policymaking power of opposition players in fifty legislative chambers across variables such as the power of the initiation of Bills, agenda setting, committee procedures, etc., finds that the regime type (parliamentary or presidential) does not influence the policy-making power of opposition players.¹²⁸ Power-sharing between the executive and the legislature, between the government and the opposition, and between the majority and the minority varies across different types of governments. Thus, this paper only proposes reforms within the procedural workings of the parliamentary form of government in India. The paper also proposes reforms keeping in mind that in a parliamentary set up in which governments are formed by the majority, minority members and opposition members are legitimate stakeholders and must occupy their legitimate space. Therefore, reforms are proposed which strike a balance between the government's right to govern and the opposition's right to question, seek accountability, propose alternatives, and create narratives.

The table below suggests some potential reforms to overcome executive dominance.

Rule of procedure	What causes executive dominance presently	How can agenda control powers be shared between the legislature and the executive?
Procedure to convene and adjourn a session of parliament	Executive's unilateral power to decide when and for how long a session has to be convened.	A multi-party committee of parliament should decide its own calendar in advance. ¹²⁹

¹²⁸ Simone Wegmann, 'Policy-making Power of Opposition Players: A Comparative Institutional Perspective' (2020) *The Journal of Legislative Studies* 1, 18.

¹²⁹ Parliaments like that of the United Kingdom, Canada, Australia, South Africa and some European countries follow this procedure. See Vatsal Khullar, 'Role of Parliament in Holding the Government Accountable' (*PRS India*, 22 November 2017) <<https://prsindia.org/theprs-blog/role-of-parliament-in-holding-the-government-accountable>> accessed 20 July 2022.

Rule of procedure	What causes executive dominance presently	How can agenda control powers be shared between the legislature and the executive?
Setting agenda for each day of the session	The Government unilaterally decides the agenda and the BAC allots time for it, but government has more presence and almost a 'veto' in the BAC.	The National Commission to Review the Working of the Constitution had recommended- "In order to ensure better scrutiny of administration and accountability to Parliament, Parliamentary time in the two Houses may be suitably divided between the government and the opposition." ¹³⁰ Opposition days, a common practice in several democracies, will help achieve that. A Private Member Bill in Parliament had also been proposed for the convening of a special session for which the agenda would not be decided by the government but by other political parties. ¹³¹ This would also provide a systematic framework for realizing opposition rights.
Procedure regarding financial business	Executive's sole prerogative on how many days to allot for discussion on Budget, when to guillotine.	Having a multi-party Committee set the calendar in advance, which can help design better, longer Budget sessions; providing more time to the Standing Committees to study budgets, and more time for Parliament to debate budgetary proposals.

However, it must be noted that any procedural reform will require initiative by the government, and if not by the government, by the opposition, even though the government may remain unresponsive. During the pandemic, when Parliament Committees were unable to meet physically, some opposition MPs had requested for virtual Committees to be permitted. To this, the Speaker of Lok Sabha said that rules regarding the same need to be discussed by the Rules Committee of Lok Sabha, and if any change is then proposed, it will have to be approved by the House.¹³² However, the Rules Committee of Lok

¹³⁰ The Hindu Centre, Summary of Recommendations: Report of the National Committee to Review the Working of the Constitution (The Hindu Centre, 2002) <<https://legalaffairs.gov.in/sites/default/files/chapter%2011.pdf>> accessed 20 July 2022.

¹³¹ The Parliament (Enhancement of Productivity) Bill 2017 <<http://164.100.47.4/BillsTexts/RSBillTexts/asintroduced/parliament-24317-E.pdf>> accessed 20 July 2022.

¹³² Liz Mathew, 'Not My Call; No Consensus Among Parties on Virtual House Panel Meetings, Says Speaker' (*Indian Express*, 19 June 2021) <<https://indianexpress.com/article/india/>

Sabha, chaired by the Speaker himself, hasn't met since its constitution in October 2019.¹³³ It has been argued that for a government, the price of change in rules is big: it needs to expend time and intellectual resources to change rules, and there may be a future price as well, as any change made today may be at its disadvantage tomorrow if it is voted out.¹³⁴ It is thus incumbent on the opposition and civil society to demand procedural reforms which can strengthen the legislature's check on the executive.

virtual-house-panel-meetings-lok-sabha-speaker-om-birla-7365603/> accessed 20 July 2022.

¹³³ Lok Sabha, Other Parliamentary Standing Committees (Lok Sabha) <http://loksabhaph.nic.in/Committee/CommitteeInformation.aspx?comm_code=40&tab=2> accessed 26 January 2022.

¹³⁴ Norton (n 30) 27.