



Centre For Legal Policy

BETTER LAWS. BETTER GOVERNANCE

DISRUPTIONS IN THE INDIAN PARLIAMENT

Yashaswini Mittal
Medha Srivastava
Kaushiki Sanyal
Arghya Sengupta



This Report is an independent, non-commissioned piece of academic work. The authors would like to thank Aditya Rajagopal, Ajey Sangai, Akriti Gaur, Bhavana Sunder, Dhvani Mehta, Kanika Sood, Kanishk Devesh, Nikhil Iyer, Prayank Jain, Raghavi Viswanath, Ritwika Sharma, Sanjana Srikumar, Sreenidhi Srinivasan, Shreya Prakash, Sumathi Chandrashekar, Tanvi Tuhina, Tarini Sardesai and Wafa Jallu for their inputs. Errors, if any, in the Report are the authors' alone.

The Vidhi Centre for Legal Policy (“Vidhi”) is an independent think-tank doing legal research and assisting government in making better laws.

For more information, see www.vidhilegalpolicy.in

About the Authors

Yashaswini Mittal and Medha Srivastava are Research Fellows at Vidhi.

Kaushiki Sanyal is an Associate Fellow at Vidhi.

Arghya Sengupta is the Research Director at Vidhi.

© Vidhi Centre for Legal Policy, 2016

Cover image from Lok Sabha TV (2015)

CONTENTS

I.	INTRODUCTION	1
II.	PROCEEDINGS IN PARLIAMENT	3
	A. FINDINGS.....	5
	1. Comparative Assessment of the proceedings in both Houses	5
	2. Key Takeaways	17
	B. GENERAL OBSERVATIONS	17
	1. Substantive reasons for disruptions.....	17
	2. Structural reasons for disruptions.....	22
III.	COMPARATIVE STUDIES OF PARLIAMENTARY PROCEDURE IN OTHER JURISDICTIONS	25
	A. UNITED KINGDOM	26
	1. Devices available to Members of Parliament in the House of Commons.....	26
	2. Parliamentary etiquette and suspension of members for disorderly conduct	29
	3. Findings	31
	B. UNITED STATES OF AMERICA	32
	1. Devices available to Members to raise issues.....	32
	2. Etiquette and suspension of members for disorderly conduct	34
	3. Findings	36
	C. SOUTH AFRICA.....	37
	1. Devices available to Members of the National Assembly to raise issues.....	37
	2. Parliamentary etiquette and suspension of members for disorderly conduct	39
	3. Findings	41
	D. GERMANY	42
	1. Provisions for raising issues by members of the Bundestag	43
	2. Parliamentary etiquette and suspension of members for disorderly conduct	46
	3. Findings	47
	E. LESSONS FOR INDIA	49
	1. Reduction of salaries of suspended Members as a deterrent against misbehaviour ..	49
	2. Careful Structuring of Sessions and Debates.....	49
IV.	DISRUPTIONS IN THE RAJYA SABHA AND BICAMERALISM IN INDIA	52
V.	RESTRICTIONS ON PRIVILEGES OF A MEMBER OF PARLIAMENT	59
	A. ANTI-PARTY ACTIVITY	59
	B. DEFECTION	61

VI. RECOMMENDATIONS	67
A. STRUCTURAL REFORMS.....	67
1. Composition of the Rajya Sabha	67
2. Application of the law on anti-defection	68
3. Inner Party Democracy	69
4. Discussion led by parties in opposition.....	69
5. Prime Minister’s Questions	69
B. SUBSTANTIVE REFORMS	70
1. Permission to intervene, and the expression of a divergent view.....	70
2. Disrupting members to be named by the Speaker	71
3. Ethics Committee Reforms.....	71
4. Reduction of salary for suspended members	72
C. MEASURES FOR POPULAR ACCOUNTABILITY	73
1. Discontinuing live telecast when disruptions become excessive.....	73
2. Parliamentary Disruptions Index	73
3. Productivity Meter	74

I. INTRODUCTION

Disruptions have become an endemic feature of the functioning of the Indian Parliament. This has led to widespread public outcry that has focused on two elements— *first*, the waste of taxpayers' money on a perpetually disrupted and consequently, non-functioning Parliament; *second*, the legislative paralysis that has stultified governance. However, little attention has been paid to what the underlying causes for such disruptions are. More crucially, very little writing has focused on why MPs, envisaged as the embodiments of responsiveness to their constituents, have continued to disrupt Parliament, and been immune to popular criticism.

This Report makes two key contributions— *first*, it demonstrates on the basis of a detailed empirical study of four parliamentary sessions in both Houses of Parliament, as to what the causes for disruptions are. Delineation of such causes is a critical precursor to any reform measure directed at reducing incidents of disruption. *Second*, it makes the argument that disruptions are both key constitutive factors as well as manifestations of a transformed Parliament— its primary nature has changed from being the apex legislative body in India to a forum for grandstanding on matters of public importance. Disruptions are an effective method for such grandstanding; equally, the changed nature of Parliament makes disruptions acceptable.

This Report is based on the fundamental premise that a disruption—understood as an un-parliamentary act that causes a break in parliamentary proceedings—is unhealthy for democracy. Though protest is not only acceptable, but also desirable in Parliament, disruptions, it is posited, cross the line from protests to un-parliamentary behaviour. To provide a roadmap for reducing disruptions is thus the fundamental objective of this Report.

Chapter II studies the day-to-day proceedings in two parliamentary sessions, the Winter Session of 2013-14 and the Monsoon Session of 2015. It defines what is (and what is not) a 'disruption' for the purpose of this Report and consequently, the number of hours for which both the Rajya Sabha and Lok Sabha were disrupted in these two sessions. On this basis, this Chapter highlights both the generalisable structural and substantive causes for disruptions; the detailed subject matter causes for such disruptions in the sessions are dealt with in the Annexure to this Report. Chapters III, IV and V take off from three key inferences in Chapter II— *first*, that several causes for disruptions deal with structuring of sessions as well as matters of public controversy, facets that are not unique to the Indian Parliament; *second*, that the Rajya Sabha, the Upper House of Parliament/ the Council of States, that is an indirectly elected body expected to hold sober debates, is often more disrupted than the Lok Sabha; *third*, that mass disruptions in Parliament are a direct result of the emphasis attached to the allegiance of a member towards her party, which leads such a member to, either implicitly or explicitly, support disruptions by her party members. Accordingly, Chapter III discusses key structural and disciplinary provisions pertaining to parliamentary functioning in the United Kingdom, the United States of America, Germany and South Africa. Chapter IV delves into the original rationale for the Rajya Sabha and offers thoughts on why it matches the Lok Sabha in terms of

disruptions today. Chapter V highlights how the emphasis on the loyalty of a member towards her party prioritises the party's view over that of the individual member. Finally, Chapter VI ties together the key threads and offers specific, practically implementable suggestions for reform to get Parliament fully functioning again.

Ultimately, this Report posits that the significant and continuing incidence of disruptions in both Houses of Parliament emphasises a more fundamental and ongoing transformation of Parliament itself. Its primary function is morphing from a body that legislates for the country to a theatre for grandstanding on matters of public importance. If such behaviour is considered to be the new *métier* of the Indian parliamentarian then effective disruptions that stall functioning of the House, and attract media attention to both the cause and the parliamentarian, may represent the apogee for achievement rather than cause for consternation.

Lest such a change take place insidiously, as has been the case thus far, this Report calls disruptions out for what they are— an aberration in a well-functioning parliamentary democracy. By suggesting reforms that are based on close empirical research and comparative experience, it hopes to be of use in such a trend being arrested.

II. PROCEEDINGS IN PARLIAMENT

The day-to-day proceedings of both Houses of Parliament during two sessions— the Winter Session of 2013-2014, and the Monsoon Session of 2015, have been analysed in this Section of the Report. The selection of the two sessions is based upon the markedly distinct composition of elected members in the Lok Sabha of each session, and the bearing such composition has on decision-making in the Rajya Sabha. While the Fifteenth Lok Sabha in the Winter Session of 2013-2014 had a coalition government of the United Progressive Alliance (“UPA”),¹ an alliance of the Indian National Congress (“INC”) and other parties, the Sixteenth Lok Sabha in the Monsoon Session of 2015 was predominantly composed of members of the Bharatiya Janata Party (“BJP”) which had a majority on its own.² Despite the differential composition of the Lok Sabha, the Rajya Sabha, which is composed of indirectly elected members, continued to have a large number of members from the INC in both sessions.³ Many other

¹ **The composition of the Fifteenth Lok Sabha was as follows:** (1) Indian National Congress(INC) - 211; (2) Bharatiya Janata Party(BJP) - 119; (3) Samajwadi Party(SP)- 23; (4) All India Trinamool Congress(AITC) - 21; (5) Bahujan Samaj Party(BSP)- 21; (6) Janata Dal (United) (JD(U)) - 20; (7) Dravida Munnetra Kazhagam(DMK)- 18; (8) Communist Party of India (Marxist)(CPI(M)) - 16; (9) Biju Janata Dal(BJD) - 14; (10) Independents(Ind.) - 11; (11) Shiv Sena(SS)- 11; (12) All India Anna Dravida Munnetra Kazhagam(AIADMK) - 9; (13) Nationalist Congress Party(NCP) - 9; (14) Telugu Desam Party(TDP) - 6; (15) Rashtriya Janata Dal(RJD)- 5; (16) Rashtriya Lok Dal(RLD) - 5; (17) Communist Party of India(CPI) - 4; (18) Shiromani Akali Dal(SAD) - 4; (19) Jammu and Kashmir National Conference(J&KNC) - 3; (20) Janata Dal (Secular)(JD(S))- 3; (21) All India Forward Bloc (AIFB)- 2; (22) Haryana Janhit Congress (BL) (HJC) - 2; (23) Indian Union Muslim League (IUML)- 2; (24) Jharkhand Mukti Morcha(JMM)- 2; (25) Jharkhand Vikas Morcha (Prajanatrik)(JVM (P))- 2; (26) Revolutionary Socialist Party(RSP)- 2; (27) Telangana Rashtra Samithi(TRS) - 2; (28) Yuvajana Sramika Rythu Congress Party(YSR Congress Party)- 2; (29) All India Majlis-E-Ittehadul Muslimeen(AIMIM)- 1; (30) All India United Democratic Front(AIUDF)- 1; (31) Asom Gana Parishad(AGP)- 1 ; (32) Bahujan Vikas Aaghadi(BVA)- 1; (33) Bodoland Peoples Front(BPF)- 1; (34) Kerala Congress (M) (KC(M))- 1; (35) Marumalarchi Dravida Munnetra Kazhagam(MDMK)- 1; (36) Nagaland Peoples Front(NPF)- 1; (37) Sikkim Democratic Front(SDF)- 1; (38) Swabhimani Paksha(SWP)- 1; and (39) Viduthala Chiruthaigal Katchi(VCK)- 1.

² **The composition in the Sixteenth Lok Sabha was as follows:** (1) Bharatiya Janata Party(BJP)- 280; (2) Indian National Congress(INC)- 45; (3) All India Anna Dravida Munnetra Kazhagam(AIADMK)- 37; (4) All India Trinamool Congress(AITC)- 34; (5) Biju Janata Dal(BJD)- 20; (6) Shiv Sena(SS)- 18; (7) Telugu Desam Party(TDP)- 16; (8) Telangana Rashtra Samithi(TRS)- 11; (9) Communist Party of India (Marxist)(CPI(M))- 9; (10) Yuvajana Sramika Rythu Congress Party(YSR Congress Party)- 9; (11) Lok Jan Shakti Party(LJSP)- 6; (12) Nationalist Congress Party(NCP)- 6; (13) Samajwadi Party(SP)- 5; (14) Aam Aadmi Party(AAP)- 4; (15) Rashtriya Janata Dal(RJD)- 4; (16) Shiromani Akali Dal(SAD)- 4; (17) All India United Democratic Front(AIUDF)- 3; (18) Independents(Ind.)- 3; (19) Jammu and Kashmir Peoples Democratic Party(J&KPDP)- 3; (20) Rashtriya Lok Samta Party(RLSP)- 3; (21) Anonymous party (name is not available on the Lok Sabha website) - 2; (22) Apna Dal(Apna Dal)- 2; (23) Indian National Lok Dal(INLD)- 2; (24) Indian Union Muslim League (IUML)- 2; (25) Janata Dal (Secular)(JD(S))- 2; (26) Janata Dal (United) (JD(U)) - 2; (27) Jharkhand Mukti Morcha(JMM)- 2; (28) All India Majlis-E-Ittehadul Muslimeen(AIMIM)- 1; (29) All India N.R. Congress(AINRC)- 1; (30) Communist Party of India(CPI)- 1; (31) Kerala Congress (M) (KC(M))- 1; (32) Nagaland Peoples Front(NPF)- 1; (33) Pattali Makkal Katchi(PMK)- 1; (34) Revolutionary Socialist Party(RSP)- 1; (35) Sikkim Democratic Front(SDF)- 1; and (36) Swabhimani Paksha(SWP)- 1.

³ **Composition of the Rajya Sabha as on March 7, 2016:** (1) All India Anna Dravida Munnetra Kazhagam (AIADMK) - 12; (2) All India Trinamool Congress (AITC)- 12; (3) Biju Janata Dal (BJD)- 7; (4) Bharatiya Janata Party (BJP) - 48; (5) Bodoland People’s Front (BPF)- 1; (6) Bahujan Samaj Party (BSP)- 10; (7) Communist Party of India (CPI) - 1; (8) Communist Party of India (Marxist) (CPI(M))- 9; (9) Dravida Munnetra Kazhagam (DMK)- 4; (10)

parties were in close pre-poll or post-poll alliances with either the BJP or the INC.⁴ Those that formed alliances with neither continued to remain in opposition in both sessions.⁵

By closely analysing the proceedings in these two sessions, this Section looks to identify the various issues that cause disruptions. The purpose of such analysis is threefold— to assess the productivity of the two Houses, the manner in which disruptions took place, and the reasons that prompted such disruptions. By means of this analysis, the discussion below will demonstrate that disruptions during proceedings in Parliament may be both spontaneous as well as planned. At the same time, they bring to light several structural and substantive issues pertaining to the manner in which Parliament functions. The relevant particulars of the day-to-day proceedings of each House during each session have been presented in tabular form in the Annexure to this Report.

It is pertinent to mention that an ‘interruption’ has been classified in this Report to mean an interjection by a member during the speech of another member or during the discussion on a listed item, or a statement by a member on an issue of public importance. Rather than causing obstructions to the proceedings of the House, such interruptions often make for a constructive debate amongst Members of Parliament (“MPs”), or at any rate fall within the confines of parliamentary etiquette.⁶ On the contrary, a ‘disruption’, usually a longer break in parliamentary proceedings, encompasses an undesired statement, action and gesture that not only delays the transaction of business in Parliament, but also violates the behavioural protocol that every MP is required to observe.⁷ Among other things, the showing of placards, shouting of slogans, entering the well of the House, and the call for adjournment motions, all tantamount to disruptions. However, walk-outs from the House do not fall within the scope of disruptions, but rather constitute a legitimate form of protest or, for the purpose of this Report, interruptions. While it is admitted that this distinction may be case-sensitive

Indian National Congress (INC)- 67; (11) Independent & Others (IND.)- 7; (12) Indian National Lok Dal (INLD)- 1; (13) Indian Union Muslim League (IUML)- 1; (14) J&K Peoples Democratic Party (J&K PDP)- 2; (15) Janata Dal (Secular) (JD(S)) - 1; (16) Janata Dal (United) (JD(U))- 12; (17) Jharkhand Mukti Morcha (JMM)- 1; (18) Kerala Congress (M) (KC(M)) - 1; (19) Nationalist Congress Party (NCP)- 6; (20) Nominated (NOM.)- 8; (21) Rashtriya Janata Dal (RJD)- 1; (22) Republican Party of India (A) (RPI(A))- 1; (23) Shiromani Akali Dal (SAD)- 3; (24) Sikkim Democratic Front (SDF) - 1; (25) Samajwadi Party (SP)- 15; (26) Shiv Sena (SS)- 3; (27) Telugu Desam Party (TDP)- 6; and (28) Telangana Rashtra Samithi (TRS)- 1.

⁴ The United Progressive Alliance - II (UPA-II) Government was in power during the Winter Session of 2013-2014. The incumbent National Democratic Alliance (NDA) Government was in power during the Monsoon Session of 2015.

⁵ Please see footnotes 1, 2 and 3.

⁶ Carole Spary, ‘Disrupting Rituals of Debate in the Indian Parliament’ (2010) *The Journal of Legislative Studies*, 16:3, 338-351.

⁷ *Ibid.*

and necessarily subjective, it has been made in order to distinguish a productive discussion with interjections from an extended and unproductive hold-up of proceedings.

A. FINDINGS

For an effective assessment of the working of the two Houses of Parliament, the sessional analysis is divided into two sub-sections. The first sub-section undertakes a comparative assessment of the sittings of each House as mentioned in the tables provided within the Annexure to this Report; the second sub-section ties in the specific findings in the first sub-section with general observations on disruptive conduct that are common to both Houses of Parliament. Though several inferences will be made, a dominant perception that emerges is that the nature of Parliament has itself changed from a forum that primarily passes legislation to one that provides a platform for members to seek attention on matters of public importance.

1. Comparative Assessment of the proceedings in both Houses

By way of a comparative assessment of two parliamentary sessions, namely the Winter Session 2013-2014 and the Monsoon Session 2015, the proceedings of both Houses of Parliament have been closely analysed. The linkages between and distinguishing features of both Houses of Parliament that emerge from this analysis have been alluded to at the end of this Section. The comparative assessment encompasses: (1) the proceedings of the Rajya Sabha in the Winter Session of 2013-2014 (“RS I”)⁸, where close to 72 hours and 50 minutes were lost to disruptions/interruptions and forced adjournments; (2) the proceedings of the Lok Sabha in the Winter Session of 2013-2014 (“LS I”)⁹, where close to 90 hours and 18 minutes were lost to disruptions/interruptions and forced adjournments; (3) the proceedings of the Rajya Sabha in the Monsoon Session of 2015 (“RS II”)¹⁰, where close to 72 hours and 17 minutes were lost to disruptions/interruptions and forced adjournments; and (4) the proceedings of the Lok Sabha in the Monsoon Session of 2015 (“LS II”)¹¹, where close to 34 hours and 4 minutes were lost to disruptions/interruptions and forced adjournments. Reference has also been made to the relevant Rules of Procedure and Conduct of

⁸ “Resume of the Business transacted by the Rajya Sabha in its Two Hundred and Thirtieth Session”, Rajya Sabha Secretariat (5th to 18th December, 2013 and 5th to 21st February, 2014), New Delhi, available at <<http://164.100.47.5/newlobsessions/Sessional%20Resume/r230.pdf>>, accessed on 1st April, 2016.

⁹ “Resume of work done by the Lok Sabha”, Fifteenth Lok Sabha, Fifteenth Session (Part I and II), Lok Sabha Secretariat (2013-2014), available at <<http://164.100.47.132/resumeofwork/XV/150LS.pdf>>, accessed on 1st April, 2016.

¹⁰ “Resume of the Business transacted by the Rajya Sabha in its Two Hundred and Thirty Sixth Session”, Rajya Sabha Secretariat (21st July to 13th August, 2015), New Delhi, available at <<http://164.100.47.5/newlobsessions/Sessional%20Resume/r236.pdf>>, accessed on 1st April, 2016.

¹¹ “Resume of work done by the Lok Sabha”, Sixteenth Lok Sabha, Fifth Session, Lok Sabha Secretariat (2015), available at <<http://164.100.47.132/resumeofwork/V/2678LS.pdf>>, accessed on 1st April, 2016.

Business in the Lok Sabha (“Lok Sabha Rules”), and the Rules of Procedure and Conduct of Business in the Council of States or the Rajya Sabha (“Rajya Sabha Rules”) in order to understand relevant parliamentary procedure and behavioural protocols that MPs are required to observe. The figures mentioned in the analysis have been taken from official documents which are available on the website of the Rajya Sabha and the Lok Sabha.

DISRUPTIONS/INTERRUPTIONS IN PARLIAMENT

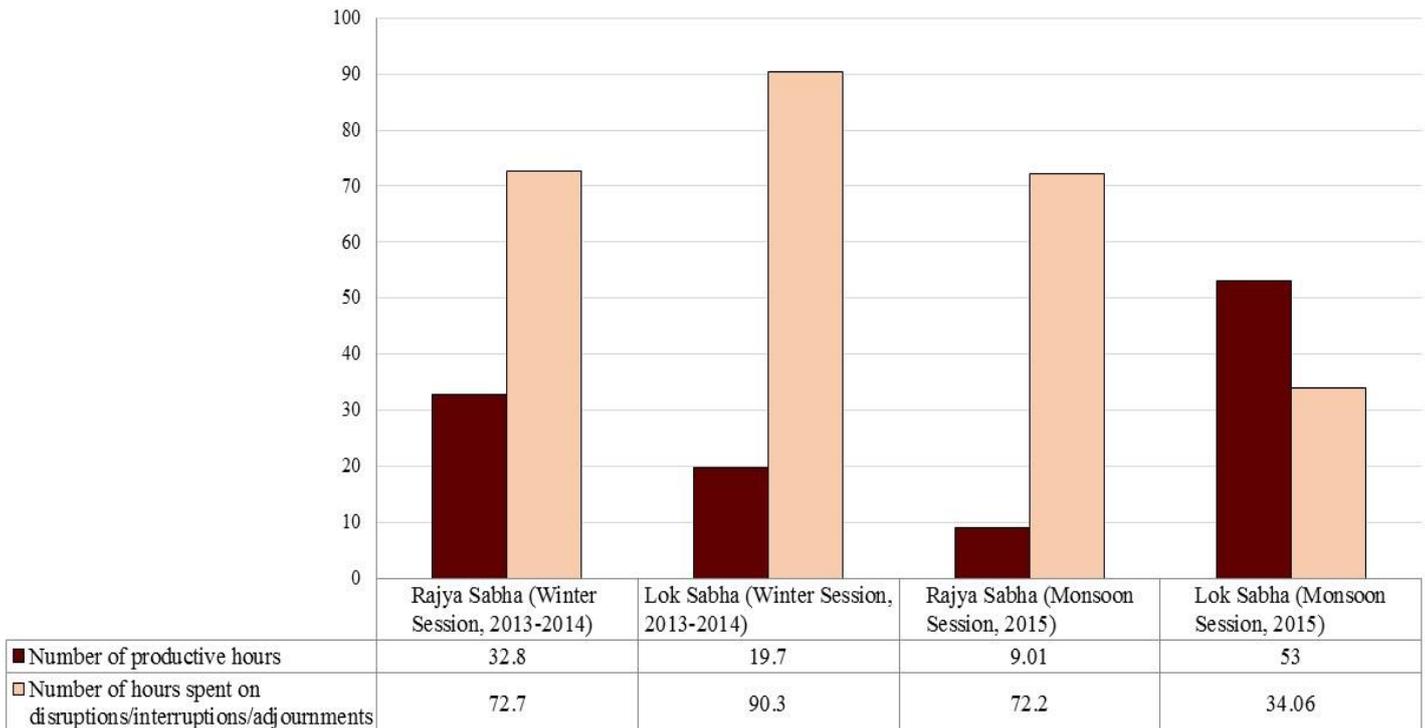


Figure I

(a) Legislative Process- Theory and Practice

As the apex law-making body in India, Parliament is vested with the authority of enacting and amending legislation through an extensive process of consultation, involving three stages. According to Part V of the Constitution of India, a bill, except a money bill,¹² may originate in either House of Parliament subject to certain conditions that are listed in the Rules of either House. The bills may be categorised as government bills (i.e. bills introduced by ministers), private members’ bills (i.e.

¹² Money bills are those bills that primarily contain provisions on the imposition and abolition of taxes, and on the appropriation of monies out of the Consolidated Fund of India; the Rajya Sabha can only discuss money bills for the purpose of recommending amendments to such bills by returning them to the Lok Sabha. Money bills cannot be introduced in, or amended by the Rajya Sabha. For more information, please see: “How a Bill becomes an Act”, Parliament of India website, available at <<http://www.parliamentofindia.nic.in/ls/intro/p5.htm>>, accessed on 1st April, 2016.

bills introduced by members who are not ministers), bills to replace ordinances promulgated by the President, and bills to amend the Constitution.¹³ While the time required to be spent on discussing government bills has not been specified in parliamentary rules, it is typically required to constitute a major portion of the total time spent on the transaction of business in Parliament. In the context of private members' business, however, the Rules of both Houses specify that the last two and half hours of every sitting on a Friday are required to be devoted towards the transaction of private members' business, including the introduction/consideration/passage of private members' bills.¹⁴ In the instance there is no sitting on a Friday, the Speaker of the Lok Sabha or the Chairman of the Rajya Sabha may allocate two and half hours on any other day of the week for the transaction of

THE PASSAGE OF LEGISLATION IN PARLIAMENT

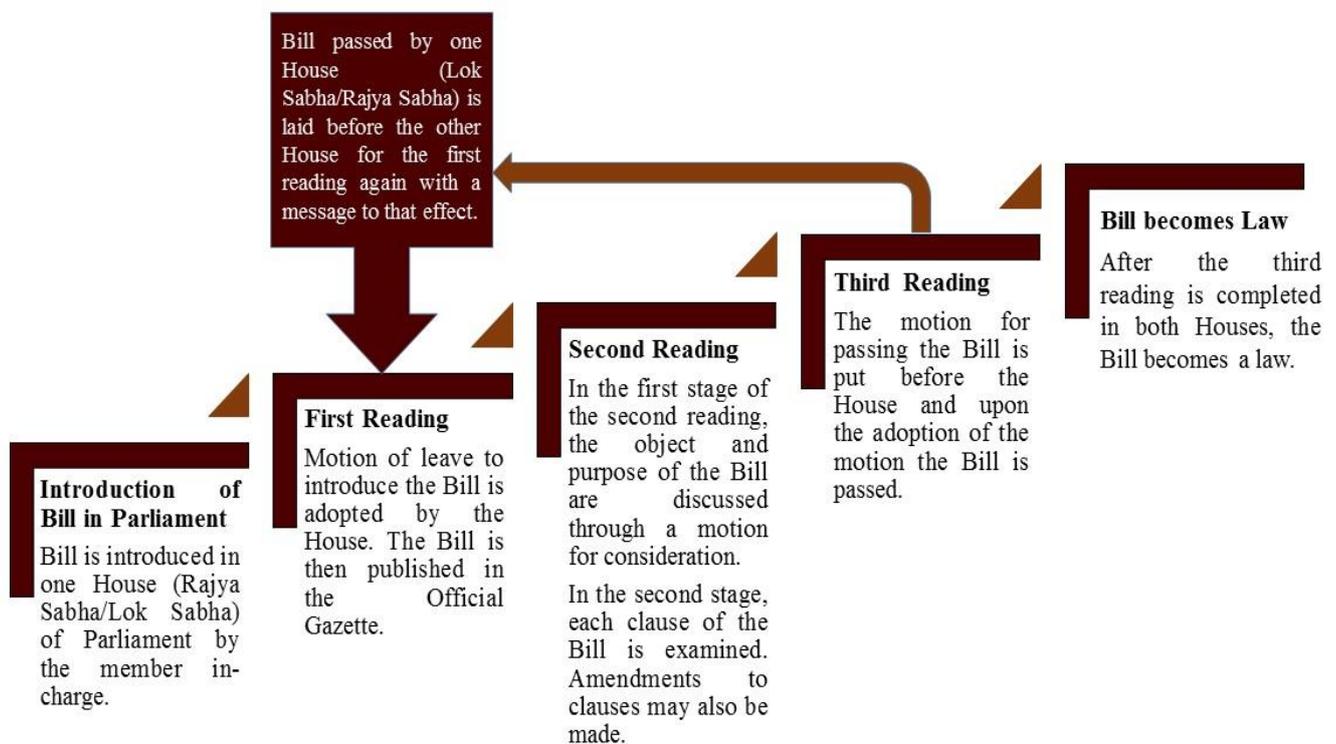


Figure II

private members' business.¹⁵

¹³ The Rules of the Procedure and the Conduct of Business in the Council of States ("Rajya Sabha Rules"), Chapter IX; The Rules of the Procedure and the Conduct of Business in Lok Sabha ("Lok Sabha Rules"), Chapter X; Also see "Legislative Process", Lok Sabha website, available at <http://164.100.47.132/LssNew/abstract/legislative_process.htm>, accessed on 1st April, 2016.

¹⁴ "Private Members' Bills and Resolutions", Lok Sabha website, available at <http://164.100.47.132/LssNew/abstract/private_members.htm>, accessed on 1st April, 2016; Also see "Handbook for Members of Rajya Sabha", Rajya Sabha Secretariat (2010), available at <http://rajyasabha.nic.in/rsnew/handbook/hand_book_2010.pdf>, accessed on 2nd April, 2016.

¹⁵ *Ibid.*

The first stage of every legislative decision-making process involves the introduction of the bill on the floor of the House for its very first reading.¹⁶ In case the motion for leave to introduce the bill is opposed by a member of the House, the Speaker of the Lok Sabha, or the Chairman of the Rajya Sabha, as the case maybe, may, at her discretion, allow that member to make a brief statement on the grounds of her opposition. The member who moves the bill may also be allowed some time to respond to the opposing views raised by the other member. After the motion for introduction of the bill has been adopted by the House, the bill is published in the Official Gazette. Thereafter, the bill is either referred to a parliamentary committee, or laid before the House for a second reading. In the first stage of the second reading of the bill, the object and purpose of the bill is discussed by means of a motion for consideration.¹⁷ Subsequently, the Houses examine each clause of the bill and propose amendments, if required.¹⁸ As soon as the motion for passing the bill is adopted by the House under the third reading, the said bill is sent for concurrence to the other House. Once this process is repeated in the other House, the Bill becomes law.¹⁹

While these guidelines on enacting legislation are sufficiently comprehensive, neither of the two Houses of Parliament, in either of the two sessions analysed, adequately adhered to such guidelines in their transaction of legislative business, nor did legislative business itself form a significant component of their functioning.

- In RS I, approximately 72 hours and 50 minutes were lost to disruptions/interruptions and forced adjournments. As a result, RS I was productive for a total of 32 hours and 52 minutes over a period of 22 days with 5 additional hours being allocated to make up for lost time. No private members' bills were introduced in RS I. The only private members' business (resolution) taken up at the Session took only 2 minutes out of the total 10 hours allotted to it. In contrast, 11 government bills were introduced, 8 government bills were passed, 9 government bills were returned, 3 government bills were withdrawn, and 1 government bill was deferred. While the legislative business of the government took up approximately 11 hours and 45 minutes, it constituted only 36% of the total productive time in RS I.

¹⁶ "Legislative Process", Lok Sabha website (n 13) ; Also see "Legislative Functions of Rajya Sabha", Rajya Sabha website, available at <<http://rajyasabha.nic.in/rsnew/legislation/introduction.asp>>, accessed on 2nd April, 2016; "Legislative Procedure in the Rajya Sabha", Rajya Sabha Secretariat (2005), available at <http://rajyasabha.nic.in/rsnew/practice_procedure/legislative_procedure.pdf>, accessed on 2nd April, 2016.

¹⁷ *Ibid.*

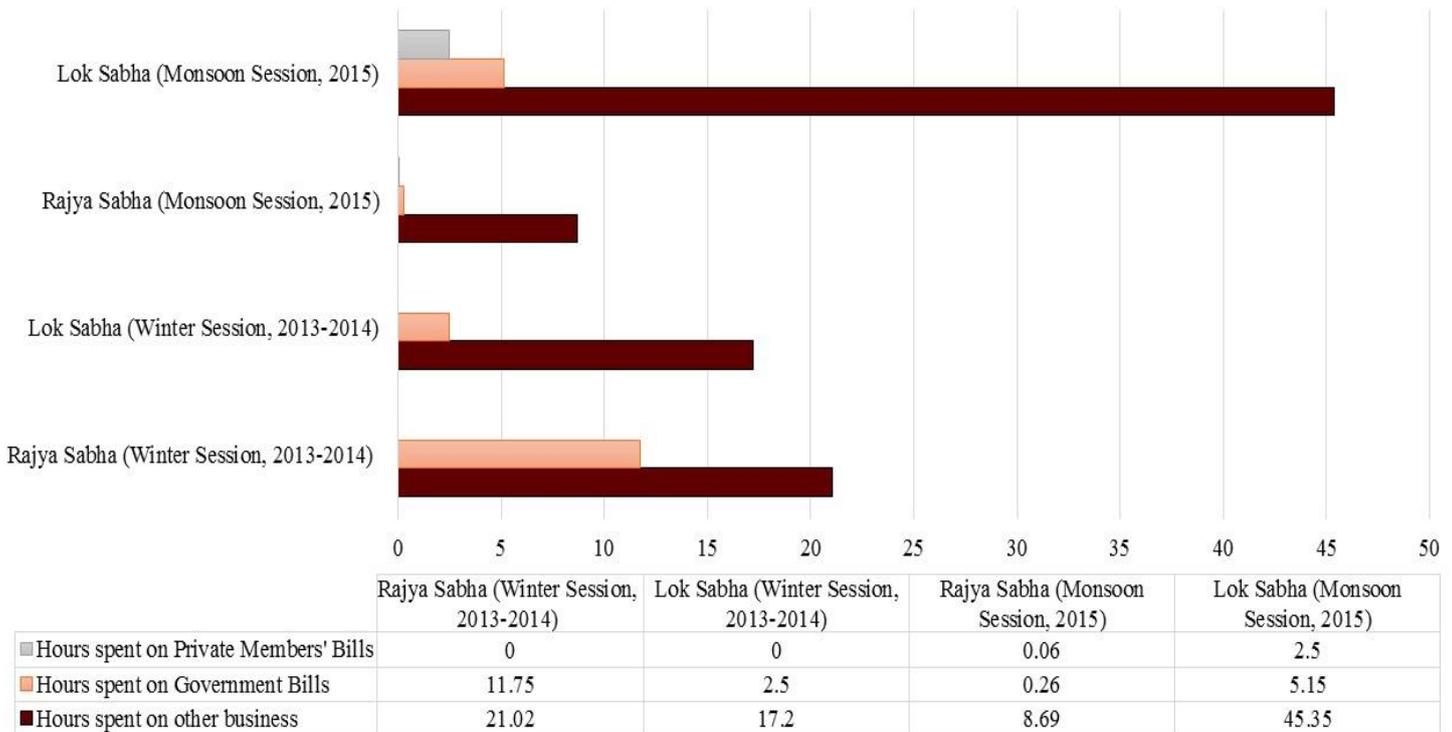
¹⁸ Legislative Process & Legislative Functions of Rajya Sabha (n 16).

¹⁹ Legislative Process & Legislative Functions of Rajya Sabha (n 16).

- In comparison, LS I lost as many as 90 hours and 18 minutes to disruptions/interruptions and forced adjournments. Consequently, the productivity of LS I was limited to 19 hours and 45 minutes over a period of 22 days, wherein only 9 additional minutes were spent to complete the listed business. Although 10 hours were allocated for private members' business, there was no time spent on such business at all. In contrast, a total of 14 government bills were introduced. 13 bills were passed. However, the legislative business of the government took up only 2 hours and 30 minutes, which constituted a mere 13% of the total productive time in LS I.
- Similarly, RS II also sat for only 9 hours and 1 minute of productive time over a period of 17 days. It lost approximately 72 hours and 17 minutes to disruptions/interruptions and forced adjournments. There was no extra time spent in RS II to make up for the time lost due to disruptions/interruptions and forced adjournments. The legislative business of the government was conducted for only 16 minutes at the Session, where 2 government bills were returned, and 3 government bills were withdrawn. As a result, the time spent on legislative business of the government constituted 3% of the total productive time. Further, the introduction of 6 private members' bills took up 4 minutes out of total 7.5 hours allocated to private members' business. Other private members' business (resolutions) took up an additional 3 minutes. No bill (government or private members' bill) was either passed, considered or debated in RS II.
- In contrast, LS II was the most productive out of all the sessions studied. The total productive time spent in LS II was 53 hours over a period of 17 days. This time included 5 hours and 27 minutes of extra time that was spent to make up for the time lost and complete the listed business. The time lost to disruptions/interruptions and forced adjournments in LS II was the lowest of the sessions analysed, at 34 hours and 4 minutes. A total of 10 government bills were introduced during the Session, out of which 2 bills were passed. 4 other pending government bills were also passed by the House. The transaction of the legislative business of the government took up 5 hours and 9 minutes, which constituted 9.4% of the total productive time. Furthermore, 45 private members' bills were introduced in LS II, the highest in all sessions listed in the Annexure to this Report. However, none of these bills came up for consideration, discussion or passage in the House. Deliberations over private members' bills took up 2 hours 30 minutes out of the total 7.5 hours allotted for such business in LS II. Other private members' business (resolutions) took up an additional 4 minutes.

The statistics that emerge from sessional analysis of the Winter Session (2013-2014) and the Monsoon Session (2015) expose the diminishing importance of legislative business in Parliament. Combined with the other statistics on disruptions discussed below, it is safe to assume that the role of the Parliament as the primary law-making authority of India is undergoing transformation.

HOURS SPENT ON LEGISLATIVE BUSINESS



Transaction of Business during the Productive Hours of a Session

Figure III

(b) Devices available to Members of Parliament

The Lok Sabha and the Rajya Sabha Rules afford a number of devices to MPs for initiating a discussion, and for interjecting during ongoing discussions in Parliament. All of these devices are governed by strict conditions under the Lok Sabha and the Rajya Sabha Rules.²⁰ The Speaker or the Chairman exercises the final authority in admitting or allowing the usage of all or any of these devices during the proceedings of the House. The various devices available to MPs include:

- **Motion:**²¹ A motion is a form of a proposal that is raised by a member on the floor of the House for gauging the views of other members on a particular subject. There are different

²⁰ “Frequently Asked Questions on Lok Sabha (As on 19.05.2015)”, Lok Sabha website, available at <<http://164.100.47.192/loksabha/FAQ.aspx>>, accessed on 3rd April, 2016; “Important Parliamentary Terms”, Rajya Sabha website, available at <http://rajyasabha.nic.in/rsnew/parliamentary_term/important_partliament_term.asp>, accessed on 3rd April, 2016.

²¹ *Ibid.*

kinds of motions that can be raised. For example: (1) a substantive motion, which is essentially a self-contained independent proposal that is formulated in such manner so as to allow the House to articulate its decision on a particular subject; (2) a substitute motion, which is moved in place of an original motion in order to give consideration to a policy, situation, statement, or any other matter that was the subject of the original motion; and (3) a subsidiary motion, which can either be an ancillary motion, a superseding motion, or an amendment and relates to another motion, or an ongoing discussion on the floor of the House.

- **Question:**²² According to the Rajya Sabha Rules and the Lok Sabha Rules, any member who wishes to ask a question is required to give prior intimation of the content of the question, the official designation of the minister to whom the question is directed, and the proposed date on which the answer to the question is desired. All such questions are required to adhere to certain conditions for their admissibility. Among other things, these conditions require all questions to not make or imply a charge on the personal character of any person, and to not be related to a trivial matter. Most of the questions listed for a particular date are asked and answered during the 'Question Hour'. If, on account of disruptions or adjournments, Question Hour is not taken up by the Speaker or the Chairman, the answers to starred questions are deemed to have been tabled before the House.²³

There are four kinds of questions that can be posed during a session: (1) a starred question that requires an oral answer, and that can lead to supplementary questions in response to the answer to such question. Only 20 starred questions can be listed on any particular day of the session; (2) an un-starred question that does not call for an oral answer but in fact requires a written answer to be laid before the House. No supplementary questions can be posed in relation to an answer to an un-starred question. Only 230 to 255 un-starred questions can be posed before the House on any given day; (3) a short-notice question that relates to a matter of urgent public importance and is allowed to be asked on a shorter notice than the other questions. Like starred questions, short-notice questions can be answered orally, followed by supplementary questions; and (4) a half-hour discussion on an answer to a starred, or an un-starred question, which requires further elaboration on a matter of fact. Half-hour discussions are normally held three days a week, viz., Monday, Wednesday and Friday, except in the Budget Session where it is usually not held until the financial business has been completed.

²² Rajya Sabha Rules, Chapter VII; Lok Sabha Rules, Chapter VII (n 13).

²³ Rajya Sabha Rules, Rule 45; Lok Sabha Rules, Rule 39 (n 13).

- **Raising of a matter of public interest:** ²⁴ In addition to the aforementioned devices, MPs can also resort to a number of informal devices for raising a matter of public importance in Parliament. These devices include: (1) a ‘calling attention’, which is a procedural device used by a member, with the prior permission of the Speaker, to call the attention of a minister to a matter of urgent public importance; (2) the raising of a matter in the Zero Hour,²⁵ where a member, who wishes to raise a matter on a particular day, is required to give prior notice to raise such matter (which is subject to the approval of the Speaker or the Chairman) before 10:00 am on that day; and (3) a ‘special mention’, which provides members of the House with the opportunity to raise matters of general public interest at any point in time with prior permission of the Chairman (not available to the MPs in the Lok Sabha).
- **Points of order:** ²⁶ The Rules of both Houses also allow all members to raise ‘points of order’. A point of order is a device, which can be used by any member, with the permission of the Speaker or the Chairman, to raise a clarification or a question on the interpretation or enforcement of the Rules of either House or the Articles of the Constitution that regulate the business of the House.

By means of the devices listed above, the members of Parliament are provided with a number of avenues to express themselves before either House of Parliament on a range of immediate and long-term issues. In practice however, the raising of motions is accompanied by a predominance of disruptive tactics.

- In RS I, the total time spent on motions was approximately 12 hours and 50 minutes. The various motions put forth before the House, included motions for elections/appointments of members to various Committees/Bodies, legislative business of the government, private members’ business, statutory resolutions, government resolutions, demands for grants, general budget, statements on ordinances and a proclamation under Article 356 of the Constitution. No half-hour discussions were admitted on any topic during RS I. 420 starred questions and 3106 un-starred questions were admitted, answers to which were laid on the table before the House. Consequently, no time was spent on orally engaging with questions *per se*. The 2 short-notice questions took up approximately 20 minutes of the time of the House. In the context of matters of public importance, there was 1 calling attention, 19 special mentions, 7 other matters raised with permission, and 1 independent submission by

²⁴ Rajya Sabha Rules, Chapters XII and XIV; Lok Sabha Rules, Rule 184 and Chapter XVI (n 13) .

²⁵ Zero Hour is a time that follows the Question Hour and the laying of papers and is before the transaction of listed business in the House. Please see Important Parliamentary Terms (n 20).

²⁶ Rajya Sabha Rules, Rule 258; Lok Sabha Rules, Rules 376-377C (n 13).

a member. All of these matters took up 2 hours and 15 minutes of the total time of the House. A number of points of order on various procedural issues were raised by several members. These took up 4 hours and 29 minutes of the total time of the House.

- In LS I, the total time spent on motions was approximately 5 hours and 16 minutes. The various motions put forth before the House, included discussions on legislative business of the government, government resolutions, statutory resolutions, private members' business, motions for the suspension of the applicability of certain parliamentary rules, the railway budget, the general budget (since the new government had taken over just earlier), the budget in respect of the National Capital Territory of Delhi which was under President's Rule, and motions of no-confidence. Although 420 starred questions were admitted during the Session, only 17 were answered orally. The answers to all 4683 un-starred questions were laid on the table before the House. In addition, answers to 403 starred questions were submitted in written form, while the answers to 17 starred questions were submitted orally. The Speaker did not admit short-notice questions or half-hour discussions on any topic. Together, the oral answers to starred questions took up 31 minutes of the total time in LS I. 195 matters, which are not points of order (but which may have been related to the proceedings of the House), were raised by members with prior permission of the Speaker. However, only 15 of those matters received replies, while the others remained pending. These matters took up 16 minutes of the total time of the House. In the context of matters of importance, a total of 127 matters were raised during the Zero Hour and 7 matters were raised with the prior permission of the Speaker. There was no matter raised by way of a calling attention. Further, no short duration discussions were held (although there were 151 notices received for such discussions) on any matter of urgent public importance. Together, the matters of public importance took up approximately 4 hours and 20 minutes.²⁷
- In RS II, the total time spent on motions was only 33 minutes. The motions put forth before the House included a motion for elections/appointments of members to various committees/bodies, motion for extension of time for presentation of the Report of the Select Committee on the Real Estate (Regulation and Development) Bill, 2013, legislative business of the government, statements regarding government business, private members' business, demands for grants, and statements on ordinances. Out of 270 starred questions that were admitted, only 6 questions were answered orally. The answers to all 2880 un-starred questions were also laid on the table before the House. The starred questions took up 10 minutes of the total time of the Session, while the un-starred questions did not take up any

²⁷ The resume of work of this Session mentions the total time spent on matters of public importance as 16 hours and 9 minutes. However, approximately 5 hours are unaccounted for in the break-up tables on such matters in the same document. Therefore, it has been assumed that the time spent on such matters is 11 hours approximately. Please see Resume of work done by the Lok Sabha, Fifteenth Lok Sabha, Fifteenth Session (n 9).

time, at all. There were no short-notice questions or half-hour discussions on any topic in RS II. Only 4 matters of public importance were raised with prior permission, which took up 4 minutes of the total time. Similar to RS I, a number of points of order were raised in RS II. These took up 5 hours and 30 minutes of the total time of the House.

- In LS II, the total time spent on motion was approximately 12 hours and 33 minutes. The various motions put forth before the House included discussions on legislative business of the government, private members' business, the railway budget, and the general budget. Although 360 starred questions were admitted during the Session, only 48 were answered orally. The answers to all 4140 un-starred questions were laid on the table before the House. In addition, 260 more questions, which were put down for oral answers, were answered in written form. The Speaker did not admit short-notice questions or half-hour discussions on any topic. The oral answers to questions took up 4 hours of the total time in LS II. 196 matters, which were not points of order (but which may be related to the proceedings of the House), were raised by members with prior permission of the Speaker. However, only 34 of those matters received replies, while the others remained pending. These matters took up 2 hours and 32 minutes of the total time. In the context of matters of importance, a total of 253 matters were raised during the Zero Hour, 1 matter was raised by way of a calling attention, and 6 matters were raised with the prior permission of the Speaker. In addition, 2 short duration discussions were held in part (although there were 134 notices received for such discussions) on matters of urgent public importance. Together, the matters of public importance took up approximately 11 hours.²⁸

The limited amount of time spent in initiating and debating various motions demonstrates a distinct under-utilisation of the devices available to MPs to hold the government to account and to effectively engage with the government on issues of public interest. This puts into question the efficacy of such devices in advancing productivity in Parliament. While the purpose of these devices is worthy, their procedural ease needs to be re-examined for promoting greater use. This is especially in light of the fact that instead of utilising these devices, it appears that MPs are resorting to disruptions for similar ends, as demonstrated below.

(c) Parliamentary etiquette and suspension of members for disorderly conduct

While MPs have a range of devices available to them while debating in Parliament, they are also required to adhere to certain standards of parliamentary etiquette. The Lok Sabha and the Rajya

²⁸ The resume of work of this Session mentions the total time spent on matters of public importance as 16 hours and 9 minutes. However, approximately 5 hours are unaccounted for in the break-up tables on such matters in the same document. Therefore, it has been assumed that the time spent on such matters is 11 hours approximately and not 16 hours as is stated. Please see Resume of work done by the Lok Sabha, Sixteenth Lok Sabha, Sixth Session (n 11).

Sabha Rules contain numerous provisions that outline such etiquette.²⁹ The Office of the Speaker of the Lok Sabha and the Office of the Chairman of the Rajya Sabha have also issued directions to regulate the behaviour of MPs in pursuance of the powers vested in the Speaker and the Chairman respectively, under the Rules of both Houses of Parliament.³⁰ These directions deal with the operation of the Rules of both Houses in accordance with the inherent powers of the Speaker or the Chairman, as applicable.

Among other things, the Rules of the Lok Sabha and the Rajya Sabha instruct all MPs to (1) not interrupt any member while he or she is speaking, by disorderly expressions or noises or in any other disorderly manner; (2) not pass through, between the Chair and any member, while he or she is speaking; (3) not leave the House when the Speaker is addressing the House; (4) maintain silence when not speaking in the House; (5) not obstruct proceedings or interrupt and to avoid making running commentaries, when another member is speaking; (6) not shout slogans in the House; (7) not tear off documents in the House in protest; (8) not display flags, emblems or any exhibits in the House; (9) not sit or stand with their back towards the Chair; and (10) not approach the Chair personally in the House, but to, instead, send chits to the officers at the Table, if necessary.³¹ As the Chairperson of the proceedings in each House of Parliament, the Speaker of the Lok Sabha and the Chairman of the Rajya Sabha respectively, have issued directives to all MPs to ensure their effective participation during parliamentary deliberations. Specifically, the directives provide guidance on (1) the methods for participation in debates; (2) mistake or inaccuracy in statements made in the House; (3) personal explanation by a member; and (4) management of questions, discussions, motions and such other devices during the proceedings.³²

²⁹ “Rules of Conduct and Parliamentary Etiquette”, Chapter 9, Rajya Sabha Secretariat (2006), available at <http://rajyasabha.nic.in/rsnew/rsat_work/chapter-9.pdf>, accessed on 6th April, 2016; “General”, Chapter II, *Hand Book for Members of the Lok Sabha*, Lok Sabha Secretariat (2004), available at <<http://parliamentofindia.nic.in/lshandbook/chapter2.pdf>>, accessed on 6th April, 2016; Also see “Parliamentary Decorum and Etiquette”, Lok Sabha Secretariat (2004), available at <http://164.100.47.192/loksabha/writereaddata/Abstract/parliamentary_decorum__and_etiqu.pdf>, accessed on 6th April, 2016.

³⁰ “Directions by the Chairman, Rajya Sabha under the Rules of Procedure and Conduct of Business in Rajya Sabha”, Rajya Sabha Secretariat (2014), available at <http://rajyasabha.nic.in/rsnew/directions/direction_chair.pdf>, accessed on 6th April, 2016; “Directions by the Speaker of the Lok Sabha”, Lok Sabha Secretariat (2014), available at <http://164.100.47.132/LssNew/direction/DIRECTION-2010-P-FINAL_1.pdf>, accessed on 6th April, 2016.

³¹ See generally, various provisions of the Rajya Sabha and Lok Sabha Rules that contain guidelines on the manner in which MPs should conduct themselves; Also see “Members - Do’s and Don’ts”, Training Cell, Rajya Sabha Secretariat (2012), available at <http://rajyasabha.nic.in/rsnew/information_booklet/Members%20Do%20&%20Dont.pdf>, accessed 6th April, 2016

³² Directions by the Speaker and the Chairman respectively (n 30).

Regardless of these rules and directions, incidents of disruption continue to affect proceedings in Parliament. To curb such disruptions and deter MPs from indulging in conduct that causes such disruptions, the Speaker of the Lok Sabha and the Chairman of the Rajya Sabha have also been vested with certain disciplinary powers under the Lok Sabha and the Rajya Sabha Rules respectively.³³ These powers allow the Speaker and the Chairman to either impose minor penalties such as naming of MPs within official records, or major penalties that require the members engaging in disorderly conduct to immediately withdraw from the precinct of the House for the remainder of the day's sitting. The members, who persistently abuse parliamentary rules, disregard the authority of the Speaker or the Chairman, and wilfully obstruct the business thereof, are also liable for suspension from the service of the House for the remainder of the session. In addition to these, Rule 374A of the Lok Sabha Rules also allows the Speaker to automatically suspend certain members of the Lok Sabha, who instigate grave disorder by coming into the well of the House, abuse the Lok Sabha Rules persistently, or wilfully obstruct the business of the House by shouting slogans. To initiate automatic suspension, the Speaker is required to identify the relevant member and name him before the House. Thereafter, the member stands suspended from the service of the House for five consecutive sittings or the remainder of the session, whichever is less.

Notwithstanding the availability of disciplinary sanctions against members engaging in disorderly conduct, the Speaker and the Chairman rarely ever initiate disciplinary action against such members. In fact, the Speaker and the Chairman, in the Lok Sabha and the Rajya Sabha respectively, chose to curb disruptions through an adjournment of the House for a specific duration as determined by the Speaker or the Chairman.³⁴ On certain occasions, the sitting of the House can also be suspended by the Speaker or the Chairman.³⁵ While the Rules of both Houses may give the impression of being extensive and fairly rigorous in regulating the behaviour of MPs, the assessment of the proceedings in both Houses of Parliament, during the course of the two Sessions casts serious aspersions, both on the content as well as the efficacy of such Rules. For example:

- No disciplinary action appears to have been taken against members who disrupted the House in RS I. On one occasion even when the names of certain members who entered the well of the House were published in the parliamentary bulletin (Part-I), there was little impact on the ongoing disruptions in the House. There was one particularly serious incident of misconduct in RS I, where a member tried to stop the Secretary-General from performing his duties by forcefully snatching the papers in his hand. While the Chairman condemned the action, no determinative punitive action was taken against the impugned member.

³³ Rajya Sabha Rules, Rules 255-256; Lok Sabha Rules, Rules 373-374A (n 13).

³⁴ Rajya Sabha Rules, Rule 257; Lok Sabha Rules, Rule 375 (n 13).

³⁵ *Ibid.*

- In LS I, there was only one instance where the Speaker of the House announced the automatic suspension of 17 members from the service of the House. One member is said to have fainted in the well of the House after the announcement by the Speaker.
- In RS II, no disciplinary action appears to have been taken against any member engaging in disorderly conduct.
- In LS II, there was one instance where the Speaker of the House announced the automatic suspension of 25 members from the House.

2. Key Takeaways

From the aforementioned observations, it is clear that the time spent on productive discussions constituted less than 40% of the total time in 3 out of 4 sittings of either House of Parliament. The remaining time appears to have been largely spent on disruptions. Only in one instance, as seen in LS II, did the number of productive hours exceed the number of hours lost to disruptions. In the remaining sittings in RS I, LS I and RS II, the hours lost to disruptions were far beyond the number of productive hours spent on the transaction of business. Consequently, LS II appears to be an exception to the general trend of low productivity in Parliament.

It is also pertinent to note that of the total number of productive hours in both Sessions, the maximum amount of time appears to have been spent on the introduction, consideration and the passage of motions on the floor of the House. Only in RS II did motions take up less than an hour of the total productive time of the Session. While a number of government bills were discussed on the floor of each House at both Sessions, there were hardly any private members' bills introduced, considered or passed by either House. Even though a large number of private members' bills were introduced in LS II, none were either considered or passed by the House.

While these deductions are specific to the events that transpired at each Session, there are a number of inferences that can be drawn on the structure and substance of the proceedings in Parliament, in general. The discussion highlights some of these inferences all of which have been drawn from detailed facts relating to disruptions provided in the Annexure.

B. GENERAL OBSERVATIONS

On a critical examination of the day-to-day proceedings of two Sessions of Parliament as mentioned in the Annexure to this Report, it is evident that there exist certain common motivations that drive MPs to disrupt Parliament. These motivations stem from recurring issues relating to either the substance or the structure of parliamentary proceedings.

1. Substantive reasons for disruptions

(a) Discussion on matters of controversy and public importance

On a perusal of the tables in the Annexure to this Report, it appears that a number of disruptions in Parliament stem from discussions on either listed topics that are controversial, or unlisted matters that are of public importance. By virtue of their very nature, controversial topics appear to be those matters that have an adverse effect on a region, a State, or the country as a whole and dominate the contemporaneous news cycle.

There have been a number of instances where matters of public importance have been raised by members by means of incessant disruptions, rather than through permissible devices with the leave of the Speaker or the Chairman. In the name of raising matters of public importance, there have also been a number of instances where members have made allegations and accusations against the other members of the House or against members belonging to a specific political party, particularly the ruling party.³⁶ These allegations/accusations led to disruptions in the House as the members making such accusations, and the members being accused, both tend to get agitated with the matter raised on the floor of the House.

In RS I and LS I, for instance, the discussions on controversial topics such as the Andhra Pradesh Reorganisation Bill, 2014, the Lokpal and Lokayuktas Bill, 2013, the ill-treatment of the Indian Deputy Consul General in the United States of America, the presentation of the Joint Parliamentary Committee Report on 2G spectrum and the issue of the Tamil Nadu fishermen involved the maximum number of disruptions. Furthermore, matters of public importance discussed in RS I and LS I included, among other things, a discussion on the outcome of the 9th Ministerial Conference of the World Trade Organisation in Bali, state of affairs of the government of the National Capital Territory of Delhi, and the constitution of a Task Force to address issues regarding the classification of certain communities as Scheduled Tribes.

In the context of RS II and LS II, discussion on controversial issues such as issuance of travel documents to the Former Indian Premier League Chief, Mr. Lalit Modi, and the surrounding issues concerning corruption in the IPL, state-specific issues (especially with regard to technical education, supply of alternate sources of energy such as bio-gas, and network and construction of national highways), the creation of a separate High Court for the State of Telangana, issues relating to corruption in Public Distribution Schemes, Prevention of Corruption (Amendment) Bill, 2013, Lokpal and Lokayuktas Bill, 2011 and issues relating to points of order (particularly during the introduction of the Constitution (122nd) Amendment Bill, 2014 (GST Bill) for discussion) involved the maximum number of disruptions. The matters of public importance raised in RS II and LS II included the stampede at Deogarh Shiva temple that led to the death of 11 persons and the damage caused by the cyclone 'Komen'.

³⁶ During LS I, an MP walked out of the House accusing the ruling government of mishandling the Telangana issue. During RS II, the opposition parties repeatedly disrupted the House and made allegations/accusations against the Minister of External Affairs and the Chief Ministers of Rajasthan and Madhya Pradesh over their alleged involvement in the Lalit Modi visa controversy and Vyapam scam respectively.

While it is clear that the discussion on controversial topics is necessary in Parliament, there is a need for formulating a better framework for discussing such topics. A strategic restructuring of the manner in which discussions on controversial topics take place in both Houses may be useful in curbing disruptions on account of such issues. Furthermore, the time allotted towards discussion on issues of public importance, which form an important part of the deliberations in Parliament, requires restructuring as well. This is necessary in order to reserve enough time for the transaction of the listed business of the House, particularly key legislative business.

(b) Grandstanding by the leaders and members of the opposition

The information in the Annexure to this Report finds most disruptions to have been initiated by members of the opposition parties. This is because the transaction of business in the Rajya Sabha and the Lok Sabha is, in some sense, as is only to be expected, driven by the government and subject to the interplay between various political groups and their associated ideologies.

In the Winter Session of 2013-2014, for instance, the UPA Government, led by the INC, was in power at the Centre. The INC members also occupied the maximum number of seats in both Houses of Parliament. However, the BJP, as the single largest opposition party, also occupied a large number of seats in both Houses of Parliament. As a result, the BJP, along with other political parties that were not in power, was successful in blocking the passage of proposals/motions introduced by the INC, and stalling the proceedings of both Houses of Parliament. To effectuate this delay, the BJP and other opposition parties engaged in interruptions, protests and disruptions, which were aimed at criticising the ruling government. On closer scrutiny of the information provided in the Annexure to this Report, several MPs who initiated disruptions in RS I and LS I, were also found to occupy leadership positions in parties other than the BJP who were in opposition the time. This may have been due to the BJP's alignment with the INC on some of the most controversial issues (i.e. the Telangana issue) discussed during the Winter Session of 2013-2014. This strengthens the view that when two political parties and their respective leaders have a united stand on a particular issue(s), the members of such parties do not engage in disruptions during discussions on that issue(s) within Parliament.

In the Monsoon Session of 2015, the NDA Government led by the BJP had come to power at the Centre. While the BJP members occupied the maximum number of seats in LS II, the INC members continued to have a significant presence in RS II. As a result, the INC, along with other opposition parties, were successful in blocking and stalling proposals/motions introduced by the BJP in RS II. On account of its majority seats in LS II, the BJP-led NDA Government was able to ensure greater productivity in LS II. While there were a large number of interruptions, disruptions and protests by the members of the INC and the other opposition in RS II, the disruptions/interruptions were found to be significantly fewer in LS II. The members engaging in disruptions also occupied important leadership positions in the INC and the other opposition parties.

It must also be noted that it is plausible that a number of members who raised unlisted matters of public importance or spoke on listed matters of public controversy disrupted proceedings of the House seemingly with the aim of garnering publicity. Since live telecast of the debates on television (on Lok Sabha and Rajya Sabha TV Channels) can be viewed by any member of the public, and any significant disruption is likely to be carried in the news cycle on matters of immediate controversy or, more generally, on matters of public importance, several MPs, it appears, use parliamentary disruptions as a tool for gaining greater visibility in the public eye.

To remedy these issues, a number of measures that hold MPs accountable in front of the public may be put in place to dissuade members from using disruptions as means to garner public support. Particularly, since disruptions are not limited to particular political parties but a consistent practice of most political parties in opposition, leaders and members of the opposition parties may also be provided with adequate opportunities to lead discussions in Parliament and express their point of view before the House without having to resort to disruptions. This has been discussed in greater detail in Chapter VI of this Report.

(c) Privileging Party over Member

The spate of large-scale disruptions may also be attributable to the privileging of the political party over the individual parliamentarian in the democratic setup. The anti-defection law, which is codified under the Tenth Schedule of the Indian Constitution and which endeavours to prevent the breach of faith of the electorate by an MP is a key manifestation of such privileging. Due to the application of the anti-defection law, an MP who, for instance, does not approve of disruptions on the floor of the House, may be compelled to toe the party line during parliamentary discussions, and be forced to tolerate or actively support disruptions by the leaders and other members of his party. Such an MP would, therefore, be unable to bring a vote, or vote in favour of an order of suspension or any other disciplinary sanction against the leaders and members of his party, who engage in disorderly conduct in Parliament.³⁷ Similarly, the threat of expulsion on the basis of defection may also induce an MP to resort to disorderly conduct, in order to have his voice heard. The reason for such behaviour may, in some sense, be the result of the suppression of the MP's freedom to dissent from the directions of his party under the anti-defection law.

Another factor may relate to the threat of expulsion of a member for engaging in 'anti-party activities'. For instance, an MP may feel hesitant in expressing his disapproval of parliamentary disruptions - within Parliament, in the press, or during the meeting of all members of his party. This

³⁷ V. Kumara Swamy, "Agree to Disagree" (*The Telegraph*, 21st April, 2010), available at <http://www.telegraphindia.com/1100421/jsp/opinion/story_12362774.jsp>, accessed on 7th April, 2016. A similar argument to privilege the legislator over the party was made recently. See Manish Tewari, "Liberate the Legislator" (*The Hindu*, 30th April 2016) available at <<http://www.thehindu.com/opinion/lead/lead-article-by-congress-leader-manish-tewari-on-liberate-the-legislator/article8537888.ece>>, accessed on 5th May 2016.

hesitation may stem from the fear on the part of the MP of being expelled from his party for participating in ‘anti-party activities’.³⁸ While there is no definitional clarity on what constitutes ‘anti-party activity’,³⁹ any action, gesture or statement of an MP, which goes against the view or direction of his party, may be construed to be an anti-party activity that may result in the expulsion of such MP. Over the course of the last decade, there have been a number of MPs who have been expelled from their parties for anti-party activities. While in some instances, the reasons for the expulsion were explained in greater detail, in others, the party leadership simply issued a statement of expulsion for anti-party activities. Consequently, it might be inferred that MPs fear expulsion from the parties they represent, which impacts their right to express their opinion.

There may be a range of other factors which prompt parliamentary disruptions. Spontaneous disruptions as a result of differences in opinion, or premeditated disruptions for impressing the leadership of the party and displaying loyalty towards the principles of the party, are some of many reasons that may prompt disruptions in Parliament. For a more detailed discussion on the remaining factors, a qualitative analysis of the thinking of individual MPs, who currently occupy office, would need to be mapped and analysed. However, the limited scope of the present Report precludes a discussion on such factors. Nonetheless, it is obvious that while the motivations of various members engaging in disruptions may differ, the affiliation of most of such members, almost always, lies with the opposition parties. Consequently, the role of opposition parties, in Parliament, needs to be revisited to reduce ongoing trend of excessive parliamentary disruptions.

For this purpose, a number of measures may be undertaken to reform the manner in which the opposition parties take part in the discussions in Parliament. Among other things, these measures may include restructuring the anti-defection law and promoting inner-party democracy preventing wanton expulsion of members, both of which compel all members of a particular party to agree on all issues, including the need to disrupt. It may also include promoting greater debate among members of the same political party, permitting opposition-led discussions in Parliament and

³⁸ In the Winter Session of 2013-2014, the INC expelled 6 of its members from LS I for defecting from the party line, which was in support of the Andhra Pradesh Reorganisation Bill. These members belonged to the Seemandhra region of Andhra Pradesh and were forced to resort to disorderly conduct to express their disapproval of the division of Andhra Pradesh under the Telangana Bill. However, instead of gauging the opinion of these members and convincing them of the need for the Bill, the INC party went ahead and expelled all 6 of these members for anti-party activities. The act of expulsion of these members was carried out to subdue dissent and induce the other INC members to adhere to the party policy on the Telangana Bill, no matter what their own opinion was on the matter.

³⁹ Abbas Et. al, *Indian Government and Politics* (Pearson Education India 2010), “Anti-Defection Act, 1985, and the Tenth Schedule of the Constitution”, pg. 194, available at <https://books.google.co.in/books?id=hko7BAAAQBAJ&pg=PA194&lpg=PA194&dq=anti-party+activities+%2B+legislative+basis&source=bl&ots=_EviD6OWrc&sig=R9GmufNUjXrz1ocCMYWNV8AWph4&hl=en&sa=X&ved=0ahUKewil34mRq5_LAhULBo4KHdkEDi4Q6AEIjAB#v=onepage&q=anti-party%20activities%20%2B%20legislative%20basis&f=false>, accessed on 7th April, 2016.

encouraging more engagement between the ruling parties and the opposition parties through all party meetings. These are dealt with in Chapter VI of this Report.

(d) Disruptions may help ruling party evade responsibility

As seen from the analysis above, the maximum number of disruptions have been found to take place in the Question Hour and the Zero Hour. While these disruptions are largely attributable to the behaviour of members of the opposition, they may also be a consequence of executive action. As previously noted in the Report, the ruling government at the Centre has the prime function of allocating the time and agenda for each session of Parliament. Accordingly, ruling governments may, in some cases, schedule the transaction of business of each Session in such manner so as to pave the way for greater disruptions in Parliament. Such disruptions make it impossible for the Speaker/Chairman to conduct the Question Hour/Zero Hour, and, in some sense, allow governments to avoid answering questions that are posed to them. According to the information in the Annexure, ruling governments rarely ever answered *all* starred questions in both Sessions that were studied, as most of the time dedicated to the Question Hour and Zero Hour was spent over disruptions. Greater participation of the opposition groups in allocating business of the House would serve as a useful check over this, and ensure greater accountability of the ruling government before Parliament.

2. Structural reasons for disruptions

(a) Lack of dedicated time for unlisted discussion

From the information provided in the Annexure, it is evident that disruptions also get triggered due to lack of adequate time for raising questions and objections in respect of matters that are not listed for discussion in a particular, or during a particular session, in general. In this regard, it is also pertinent to mention that the increase in the number of parties in the House has led to a proportionate reduction in the amount of time available to each party for discussion. To remedy these problems, the manner in which the Secretary General allocates business in each sitting of a session plays a significant role in shaping the behaviour of parties and reducing the instances of disruptions.

According to the Rules of both Houses, government business is required to be arranged by the Secretary General in consultation with the Speaker or the Chairman and the Leader of the House. The Business Advisory Committee (“BAC”) of the Lok Sabha or the Rajya Sabha can also be directed by the Speaker or the Chairman, in consultation with the Leader of the House, to recommend the time that should be allocated for discussion on a particular government bill or any other business that is slated to be introduced, considered or passed in the House.⁴⁰ The business set down for

⁴⁰ “Parliamentary Committees”, Lok Sabha website, available at <http://parliamentofindia.nic.in/lis/intro/p21.htm>, accessed on 7th April, 2016; “Arrangement of Business”,

disposal on a particular day cannot be varied on that day itself, unless the Speaker or the Chairman is satisfied that there exist sufficient grounds for permitting such variation. The business that is not included in the list of business cannot be transacted at any sitting without the permission of the Speaker or the Chairman.

While there exists an extensive procedure for the allocation of business of the House prior to each session, such procedure is never followed entirely. This is because several members wish to discuss issues that are not listed for the entire session, or are listed for another day. For example, as noted in the tables provided in the Annexure to this Report, a number of controversial matters discussed on the floor of RS I and LS I, such as the arrest of Tamil Nadu fishermen, the killing of a student from the North East and the sexual harassment charges against former Supreme Court Justice AK Ganguly were all discussed in place of other listed items. In RS II and LS II as well, there were issues raised which were not part of the routine business of the House. Issues of allegations of corrupt practices against members of the government, accusations by members of the opposition that the government was reluctant to discuss these issues, allegations of malpractices in the Indian Premier League, financial and legal issues relating to the reorganisation of the state of Andhra Pradesh- all these issues were raised in place of the routine business of the day, as was listed, and caused wastage of the sitting time of the Houses. It must be noted there were no bills passed in the 236th Rajya Sabha (Monsoon Session, 2015), as when the main bill sought to be discussed, i.e. the GST Bill was introduced for discussion, the members of the opposition and the government engaged in massive disruptions by making accusations against each other.

While there exist extensive procedures for allocating business in Parliament, there is a need to structure the sessions in Parliament in a manner that ensures the adequate implementation of the scheduled business in the House. There is also a need for providing adequate time to each party for raising matters of public importance, including those that are not listed for transaction at a particular sitting, or an entire session. The opposition parties also need to be allotted some extra time to express their opinion on the activities of the ruling government.

(b) Scarce resort to disciplinary powers

As evident from the tables in the Annexure to this Report, another systemic reason why disruptions are not effectively prevented relates to the scarce resort to disciplinary powers by the Speaker of the Lok Sabha and the Chairman of the Rajya Sabha. As a result, most members engaging in disorderly conduct are neither deterred nor restrained from engaging in such conduct. In instances where the Speaker or the Chairman have resorted to their disciplinary powers and suspended a member, there has been little impact on the disruptive behaviour of the concerned member in the future. For

Rajya Sabha website, available at <http://rajyasabha.nic.in/rsnew/rs_rule/arrangementbusiness.asp>, accessed on 7th April, 2016.

example, as noted above, the Speaker suspended 17 members in LS I, and 25 members in LS II. While the suspension somewhat reduced disruptions in LS II (though causal connections are difficult to draw), it had almost no impact on the disruptions in LS I. Some of the members, who were suspended in LS I and LS II respectively, continued to disrupt the proceedings in each of those Houses after they resumed their attendance. Further, at least one person, who engaged in disorderly conduct during LS I, also engaged in similar conduct during LS II, and was suspended for his conduct on both occasions. Consequently, it is evident that even the scarce instances of suspension of a member from the House do not serve as an adequate deterrent to dissuade the concerned member from initiating disruptions in the future. Hence, there is a need to rework the disciplinary sanctions and penalties applicable to members to ensure better regulation of disorderly conduct in Parliament.

In view of both session-specific and general analysis of the proceedings in Parliament, it is obvious that disruptions in Parliament may not always be spontaneous. In effect, on most occasions, disruptions appear to be premeditated, stemming from political manoeuvrings or planned intervention strategies. This also demonstrates an ongoing transformation of the nature of Parliament. The high incidence of disruptions together with the lack of time spent on legislative business leads to the inescapable inference that Parliament today is primarily a forum for generating publicity on issues of public importance rather than debating them; raising a hue and cry over immediate concerns rather than carefully considering legislation that will have long-lasting impact. Consequently, the structure and nature of Parliament is in urgent need of reform. Such reform is necessary not just for reducing disruptions and improving productivity but restoring Parliament as the forum for legislative activity and meaningful debate.

III. COMPARATIVE STUDIES OF PARLIAMENTARY PROCEDURE IN OTHER JURISDICTIONS

Parliaments in most democracies, like India, are governed by rules of procedure which contain codes of conduct and/or rules pertaining to debate and etiquette to be followed by their members. This Section seeks to understand the functioning of Parliamentary bodies in a select few countries to gain insight into two specific facets— first, the structuring of their parliamentary sessions and participation by members in debates; and second, disciplinary powers exercised to ensure smooth running of Parliament. Some of these insights, it is hoped, may be used to address the excessive incidence of disruptions in India.

The following jurisdictions have been studied- the United Kingdom (“UK”), United States of America (“US”), South Africa and Germany. These jurisdictions have elaborate frameworks governing parliamentary procedure and debate, rooted in constitutional provisions (as in the case of the US, South Africa and Germany) and constitutional principles (for the UK, where the constitution is unwritten). Further, the South African National Assembly faces similar disruptions and interruptions in its parliamentary debates as India does. Therefore, it has been studied to gain an understanding into how an analogous Parliament deals with disruptions. The UK, US, and German Parliament, though individually varying, have relatively more structured sessions compared to India and have been studied to gain an insight into best practices for parliamentary procedure and debate.

In the interest of brevity, the study is limited to the lower houses of these Parliaments. This refers to the House of Commons (UK), the House of Representatives (US), the National Assembly (South Africa) and the Bundestag (Germany).⁴¹

In the jurisdictions studied, the following provisions in their frameworks have been focused on-

- Devices available to members of the Parliament to raise issues
- Parliamentary etiquette and suspension of members for disorderly conduct.

In this regard both procedures, as formally provided, as well as how they operate in practice, are analysed. The former has been studied through an in-depth analysis of the rules of procedure governing the conduct and structure of the sessions in the legislative body. For the latter, to gain an

⁴¹ Germany does not make a distinction as to what constitutes an “upper” or “lower” House. However, the Bundestag has greater constitutional authority and no federal legislation can be passed in Germany without it being passed by the Bundestag. Therefore, it was felt that the study of the Bundestag would give us a more useful insight into the functioning of the legislature for the purposes of this study.

illustrative understanding into the practice actually followed in these bodies, debates spread over a period of 2 weeks have been studied in detail.⁴²

A. UNITED KINGDOM

The House of Commons in the UK is governed by procedures established by matter of convention. It is presided over by a Speaker who is elected by the members of the House from amongst themselves.⁴³ The Standing Orders of the House of Commons is a codified framework of Orders which contain elaborate guidelines on the conduct of business.⁴⁴ To understand its working in practice, debates for the first two weeks of February 2016 have been studied.

1. Devices available to Members of Parliament in the House of Commons

(a) Motions

Motions may be used for various purposes in the House of Commons. For instance, Early Day Motions (“EDMs”) are formal motions submitted for debate in the House,⁴⁵ used for reasons such as publicising the views of individual MPs, drawing attention to specific events or campaign etc. Motions may also be made to introduce and discuss bills,⁴⁶ for adjournment of the House. Discussions of reports and bills are initiated in the House through Motions. In the debates studied, various motions were made to discuss reports and bills pertaining to different societal issues, such as the Crimes Bill.⁴⁷

(b) Questions

Debates in the House begin with Oral Answers to Questions, which are governed primarily by Standing Orders 21 and 22. In the debates studied, the time allotted to answering questions orally was

⁴² In Germany, owing to language constraints, the practical operation of parliamentary procedures has been gleaned from secondary sources and information available in the form of reports of the Parliament etc. which are in English.

⁴³ See the Standing Orders of the House of Commons, Standing Order 1. “Standing Orders of the House of Commons”, available at <<http://www.publications.parliament.uk/pa/cm201516/cmstords/0002/toc.htm>>, accessed on 8th April, 2016. The Official Report of the debates can be found at “Hansard- The Official Report of all Parliamentary Debates”, available at <<http://hansard.parliament.uk/>>, accessed on 8th April, 2016.

⁴⁴ *Ibid.*

⁴⁵ ‘Early Day Motions’, available at <<http://www.parliament.uk/edm>>, accessed on 8th April, 2016.

⁴⁶ See Standing Orders 23 and 25. For an example of practice, see the House debate on 02.02.2016, where there was a motion for leave to bring in a Bill. This was done under Standing Order 23 of the Standing Orders of the House of Commons, available at <<http://www.publications.parliament.uk/pa/cm201516/cmstords/0002/body.htm#23>>, accessed on 8th April, 2016.

⁴⁷ For instance, see the debate of 10.02.2016 where the Police Grant Report (England and Wales) was tabled and discussed.

relatively peaceful.⁴⁸ In some instances, these oral answers to questions were marked by certain interruptions from other members who desired to make a point on the issue, or pointed out fallacies in the existing policy or law.⁴⁹ The Speaker ensured the time limit for oral questioning was adhered to by stating that the listed Business of the House would be taken up once the time allotted for oral questioning has lapsed.⁵⁰ After the time allotted for oral questions, topical questions were taken up for debate where members raised questions pertaining to various policy matters.⁵¹

(c) Matters of urgent public importance

Matters of urgent public importance are taken up for discussion after the time for questions is concluded. In the debates studied, some interruption and argument tends to occur when issues of urgent importance were discussed on the floor of the House.⁵² For instance, in the debate on 10.02.2016, which also happened to be a day for Prime Minister's Questions, several members of the Parliament raised issues pertaining to the government's policy towards the European Union ("EU") Referendum. In the debate on 09.02.2016, in the time allotted for members of the Opposition to raise issues, several members requested members who were speaking to give way to raise issues pertaining to the EU Referendum.⁵³ Further, in the debate of 11.02.2016, the matter of Short Money

⁴⁸ For an illustrative example, see the debate of 01.02.2016, where questions were posed by members on financial support in the form of pensions available to women senior citizens in the UK. After a brief answer was given by the Under-Secretary, the members who asked the questions proceeded to ask further questions on the issue, which were answered by the Under Secretary, available at <<http://www.publications.parliament.uk/pa/cm201516/cmhansrd/chan114.pdf>>, accessed on 8th April, 2016.

⁴⁹ See the debate of 03.02.2016 where a member was speaking and several Hon'ble members rose to raise an issue. The speaking member stated that he would give way in due time. The following is an extract from the debate- "*Several hon. Members rose— John McDonnell: I will give way in due course. Calm down. The Google deal and the Chancellor's exultation about it were immediately received with incredulity by independent tax analysts—understandably. The Chancellor and HMRC were all too keen to publicly parade the deal, but when challenged to release the detail of it, hid behind confidentiality conditions.*" Available at <<http://www.publications.parliament.uk/pa/cm201516/cmhansrd/chan110.pdf>>, accessed on 8th April, 2016.

⁵⁰ Standing Order 21(2) states that "*No question shall be taken more than one hour after the House sits, except questions which have not appeared on the order paper but which are in the Speaker's opinion of an urgent character and relate either to matters of public importance or to the arrangement of business*". For an example of the practice, see the debate of the House of Commons on 08.02.2016. The following extract will demonstrate the reaction of the Speakers when some members rose (presumably to raise other issues)- "*(Several hon. Members rose)— Mr Speaker: Order. I am sorry, but we must now move on.*". Available at <<http://www.publications.parliament.uk/pa/cm201516/cmhansrd/chan113.pdf>>, accessed on 8th April, 2016; See also the debate on 10.10.2016: "*Mr Speaker: We do not take points of order now. Points of order come after questions and statements*", available at <<http://www.publications.parliament.uk/pa/cm201516/cmhansrd/chan115.pdf>>, accessed on 8th April, 2016.

⁵¹ For instance, there was much debate centering on the issue of policy towards membership of the EU Council, civil strife in countries in the Middle East; which was followed by various members of the opposition and other parties questioning the policy decisions of the Prime Minister. See debate of 01.02.2016, available at <<http://www.publications.parliament.uk/pa/cm201516/cmhansrd/chan114.pdf>>, accessed on 8th April, 2016.

⁵² See the debate of 02.02.2016, where several members rose to raise issues during the debate on UK's relationship with the EU (See page 780 of the Official Report), available at <<http://www.publications.parliament.uk/pa/cm201516/cmhansrd/chan109.pdf>>, accessed on 8th April, 2016.

⁵³ See the debate of the House of Commons on 09.02.2016; pp. 1451-1454.

and Policy Development Grant was raised as an urgent issue. The debate on this saw several members interjecting to state their views on the topic.

(d) Points of Order

There is a separate time set out to allow the members to raise points of order.⁵⁴ The discussions on points of order were brief and specific, with members sticking to the point and no or little time spent on prolonging the discussion on these issues.

(e) Provisions available for non-government led discussions

In the House of Commons, there is time allotted for Backbench debates.⁵⁵ The Backbench Committee takes applications from members of the backbench for raising issues during the course of parliamentary debates. The existence of this provision ensures that fewer voices are left unheard in the House.⁵⁶

In addition to Backbench debates⁵⁷, Tuesdays in the House of Commons are “Opposition Days”.⁵⁸ This allows for issues which may pertain to difference of opinion with the current government’s policies

⁵⁴ A point of order is an appeal to the Chair or Speaker for clarification or for a ruling on a matter of procedure in the House of Commons. The MP must explain their reasons for believing the rules of the House have been broken and the Speaker decides whether it is a valid point of order or not. This definition has been taken from the glossary on the official website of the UK Parliament. See the debate of House of Commons on 10.02.2016 where a point of order was taken up for discussion at 10:40 pm. See also the debate of 04.02.2016, Page 1107 contains a question on a point of order which was addressed briefly by the Speaker. Available at <<http://www.publications.parliament.uk/pa/cm201516/cmhansrd/chan115.pdf>>, accessed on 8th April, 2016.

⁵⁵ The definition of Backbenchers in the glossary on the Official website of the UK Parliament is as follows: Backbenchers are MPs or members of the House of Lords that are neither government ministers nor opposition Shadow spokespeople. They are so called because, in the Chamber, they sit in the rows of benches behind their parties’ spokespeople who are known as frontbenchers. Traditionally, backbenchers were called ‘private members’; when a bill is introduced by a backbencher it is still described as a Private Member’s Bill. Available at <<http://www.parliament.uk/site-information/glossary/backbenches/>>, accessed on 8th April, 2016.

⁵⁶ The section on backbench debates in the website of the UK Parliament also contains a list of topics that were raised by seeking permission of the Committee in the year 2014-15. For an example of how backbench debates are conducted, reference can be made to the debate of 01.02.2016, where the backbench debate was taken up at 7:39 pm. Information on backbench debates is available at <<http://www.parliament.uk/business/committees/committees-a-z/commons-select/backbench-business-committee/how-the-backbench-business-committee-works/>>, accessed on 8th April, 2016.

⁵⁷ See the debate of 04.02.2016 for an example of how backbench debates are conducted. The backbench debate on this day was on the issue of UK-EU Relations. Available at <<http://www.publications.parliament.uk/pa/cm201516/cmhansrd/chan111.pdf>>, accessed on 8th April, 2016.

⁵⁸ For instance, in the Official Report of the Debate in the House of Commons on 9th February, the Opposition raised issues relating to the EU Referendum. In this, the motion was as follows:

That this House notes and regrets that the Government appears set to rush to a referendum on the UK’s membership of the European Union in June 2016; believes that no case has been made for holding a referendum at such an early stage, and that further, any such needlessly premature date risks contaminating the result; believes that a subject as fundamental as EU membership should be decisively settled after a full and comprehensive debate; notes the recommendations of the Electoral Commission on best practice for referendums; further notes that there are elections happening in

to be discussed formally as part of business of the House. Further, there is a constitutional convention called Questions to the Prime Minister, commonly referred to as 'PMQs'. This gives MPs a weekly opportunity to put queries to the Prime Minister.⁵⁹

2. Parliamentary etiquette and suspension of members for disorderly conduct

The Speaker of the House of Commons is responsible for maintaining order and conduct during debates in accordance with the Rules of Procedure. The Code of Conduct (separate for both the Houses) covers issues such as General Principles of Conduct, registering of members' financial interests, rules against the lobbying for reward or consideration etc.

In addition to this, the House of Lords and House of Commons are governed by the Committee of Ethics which is headed by the Parliamentary Commissioner. The Commissioner looks into allegations made against members of Parliament of criminal misconduct and/or cases of breach of the Code. The Commissioner is appointed under the Parliamentary Commissioner Act, 1967⁶⁰ by the sovereign. The person appointed may be removed from office if he/she is incapable of performing his/her duties or has been found guilty of misbehaviour.⁶¹

Northern Ireland, Scotland, Wales, London and some local authorities in May 2016 and that the First Ministers of each of the devolved administrations have all expressed opposition to a June referendum date; and urges the Government to set the date for the referendum having respect for the May elections as distinct electoral choices.

⁵⁹ For instance, in the debate of 10.02.2016, the Prime Minister addressed issues relating to residential support and housing plans for citizens who could not afford the same.

⁶⁰ Available at < <http://www.legislation.gov.uk/ukpga/1967/13/contents>>, accessed on 8th April, 2016.

⁶¹ See **Section 1: Appointment and Tenure of Office**. Sub section 2A onwards deals with tenure and removal.

(2A) A person appointed to be the Commissioner shall hold office until the end of the period for which he is appointed.

(2B) That period must be not more than seven years.

(2C) Subsection (2A) is subject to subsections (3) and (3A).]

[(3) A person appointed to be the Commissioner may be—

(a) relieved of office by Her Majesty at his own request, or

(b) removed from office by Her Majesty, on the ground of misbehaviour, in consequence of Addresses from both Houses of Parliament.]

[(3A) Her Majesty may declare the office of Commissioner to have been vacated if satisfied that the person appointed to be the Commissioner is incapable for medical reasons—

(a) of performing the duties of his office; and

(b) of requesting to be relieved of it

The Speaker's powers are laid down in the Standing Orders of the House of Commons.⁶² To participate in a debate or to speak during question time, Members have to "catch the Speaker's eye". The Speaker of the House of Commons has full authority to make sure MPs follow the rules of the House during debates. This can include:

- directing an MP to withdraw remarks if, for example, they use abusive language;
- suspending the sitting of the House due to serious disorder;
- suspending MPs who are intentionally noncompliant - known as 'naming'; and
- asking MPs to be quiet so Members can be heard.⁶³

In the debates studied, members wishing to interject asked the speaking members if they may interject; and the speaking member responded by saying "yes", "no" or "very briefly". Further, when the members ask each other "to give way" (this is the terminology used to take permission to interject and raise an issue), if the member speaking refuses to give way, he/she is usually allowed to continue.⁶⁴ Members adhere to the orders of the Speaker when being told not to interject when another member is speaking, even in case of controversial subjects of discussion.⁶⁵ If there is a disruption, the Speaker requests order and states that members will have full opportunity to address their issues in due course.⁶⁶

⁶² See Standing Order 1.

⁶³ 'Office and Role of the Speaker', available at <<http://www.parliament.uk/business/commons/the-speaker/the-role-of-the-speaker/role-of-the-speaker/>>, accessed on 9th April, 2016.

⁶⁴ See the following extract from the debate of 01.02.2016, available at <<http://www.publications.parliament.uk/pa/cm201516/cmhansrd/chan108.pdf>>, accessed on 9th April, 2016.

"Harriett Baldwin rose— Richard Burgon: I do wish to make some progress. [HON. MEMBERS: "Give way!"] I will give way. Harriett Baldwin: I thank the hon. Gentleman for giving way. Further to that point, the measures that he seems to object to so much are in clause 22. Why is he voting against Second Reading when there are many other excellent measures to which he presumably does not object

⁶⁵ Such as presently, the refugee crisis in Europe and the policy that different countries are adopting towards the same (See the debate of 10.02.2016).

⁶⁶ See the debate of 10.10.2016, where the Speaker stated as follows: "Order. I apologise for interrupting the hon. Gentleman. The Secretary of State and the Minister could not hear the question because of a rude eruption of noise. Perhaps the hon. Gentleman can ask his question again, and perhaps Members will have the common courtesy to allow him to be heard by their own Ministers." at Pg. 1566. See also on Pg. 1594 of the same debate, where the Speaker stated as follows: "Order. I think we need to be clear whose intervention is being taken. The Hon. Member for Hornsey and Wood Green (Catherine West) will have to express herself on another occasion or elsewhere in the debate. I think the Hon. Member for Oldham East and Saddleworth (Debbie Abrahams) is intervening." Available at <<http://www.publications.parliament.uk/pa/cm201516/cmhansrd/chan115.pdf>>, accessed on 9th April, 2016.

Disobedience of a request or order of the Speaker may lead the Speaker to invoke Standing Order No 43, requiring the Member to leave the House and its precincts for the remainder of that day's sitting.⁶⁷ Disturbances which occur in the House of Commons are dealt with very strictly.⁶⁸ If a Member has disregarded the authority of the Chair, and persistently and wilfully obstructs the House by abusing its rules, he/she (after generally being given every opportunity to apologise and set matters right) may be named. Where the Member has been suspended from the service of the House under Standing Order No 44, salary is forfeited during the period of suspension.

The ultimate punishment that can be given to a member of the House of Commons is expulsion. So far in the House of Commons, there have been a total of three expulsions, all of which were made on charges of corruption of varying degrees.⁶⁹

3. Findings

The style of debate in the UK Parliament has been described as “cut and thrust”.⁷⁰ The discussion is often noisy, with various members expressing their views on the issue simultaneously.⁷¹ However, despite the existence of some amount of interruptions, the debates studied were well-structured, adhered to the framework of rules governing Parliamentary procedure and marked by members giving due regard to the authority of the Chair as well as each other. This is attributable to effective control of the interjections by the Speaker, to ensure that the time of the House is not spent on disruptions, which may lead to a downward spiral of further argument (as is the case in the Indian Parliamentary debates studied).

The existence of an elaborate, tried and tested framework of rules governing procedure and conduct in the Parliament serves well to regulate its functioning and ensures efficiency. The existence of

⁶⁷ 'Disciplinary and Penal Powers of the House' (Factsheet G6 General Series, A publication of the House of Commons, September 2010), available at <<http://www.parliament.uk/documents/commons-information-office/g06.pdf>>, accessed on 8th April, 2016.

⁶⁸ Offenders are removed and escorted from the premises. If the disruption was serious enough to interrupt the sitting of the House or Committee, the offender(s) may be detained in a police custody room on the premises until the rise of the House, at whatever hour that may be. *Ibid.*

⁶⁹ **Horatio Bottomley** (Independent, South Hackney), was expelled in August 1922, after being convicted of fraudulent conversion of property and sentenced to seven years' imprisonment. **Garry Allighan** (Labour, Gravesend) was expelled on 30 October 1947, for lying to a committee and for gross contempt of the House after publication of an article in the World's Press News accusing Members of insobriety and of taking fees or bribes for the supply of information. **Peter Baker** (Conservative, South Norfolk) was expelled on 16 December 1954, after being sentenced to seven years' imprisonment for forgery. In this instance, the motion for expulsion need not have been moved: under the provisions then still in force of the Forfeiture Act 1870, he would have been automatically disqualified. These provisions were amended by the Criminal Law Act 1967. From 'Disciplinary and Penal Powers of the House' (n 67).

⁷⁰ 'Rules and Traditions of Parliament', available at <<http://www.parliament.uk/about/how/role/customs/>>, accessed on 9th April, 2016.

⁷¹ *Ibid.*

Backbench debates, and time set aside for members of the opposition to raise their issue and grievances goes a step further to ensure that less time is spent by members of the opposition interrupting the proceedings to raise issues of concern. Regarding disciplinary conduct, it appears that MPs in the UK largely self-regulate.⁷² It is only in rare instances that disciplinary powers are invoked. In terms of deterrent powers however, notable in the UK and absent in India, is the power of the Speaker to order forfeiture of salary of a suspended member.

B. UNITED STATES OF AMERICA

The legislative process in the US is governed by a set of rules and a body of precedent created by rulings of presiding officers, or by votes in the Congress. The Rules of Procedure of the House of Representatives (“the House Rules”)⁷³ govern the legislative process in the House of Representatives and contain the framework of provisions relating to raising of issues, motions and questions, conduct of members during debates etc. Debates spread over the first two weeks of February, 2016 in the House of Representatives have been studied to develop an understanding of the practices followed in the debates in the House.

1. Devices available to Members to raise issues

(a) Motions

Rule XVI of the Rules of the House of Representatives deals with Motions. Sub-rule 4 of Rule XVI lays down the order of priority of different motions, with the first priority being given to adjournment motions and the last one being to postpone indefinitely. Motions for adjournment cannot be subjected to debate.⁷⁴

(b) Questions

There is no separate provision governing time allotted specifically for questions in the House of Representatives. However, the Rules pertaining to legislative activity such as the debate on bills and/or amendments incorporate the asking of questions in the course of the debate.⁷⁵

⁷² Richard Kelly and Matthew Hamlyn, 'The Law and the Conduct of Members of Parliament', available at <<http://www.hartpub.co.uk/pdf/samples/9781849462952sample.pdf>>, accessed on 8th April, 2016.

⁷³ The Rules governing Senate Procedure, available at <<http://www.rules.senate.gov/public/index.cfm?p=RulesOfSenateHome>>, accessed on 8th April, 2016.

⁷⁴ See the debate of 08.02.2016: "**ADJOURNMENT-** *The SPEAKER pro tempore. Without objection, the House stands adjourned until noon tomorrow for morning-hour debate. There was no objection. Thereupon (at 2 o'clock and 3 minutes p.m.), under its previous order, the House adjourned until tomorrow, Tues-day, February 9, 2016, at noon for morning hour debate.*"

⁷⁵ For instance, in the debate of 03.02.2016, where there was a lengthy speech by a member on the Employee Ownership Act, at the end of which a question was asked whether the cost incurred by the Government of certain

(c) Matters of urgent public importance

Debates in the House of Representatives start with the “Morning Hour Debate” where members raise issues of importance specific to their respective districts and/or states; including matters of national and social relevance, condolences or issues of national importance.⁷⁶ Before speaking, members ask for leave to speak and are allowed to make speeches on issues they wish to raise for one minute.⁷⁷

(d) Provisions available for members of the opposition to raise issues

Debate time in the House of Representatives for a measure is normally divided between proponents and opponents. Each side yields time to those members who wish to speak on a bill. A day in the House of Representatives begins with one minute speeches, wherein five minutes are allotted to each side of the House.⁷⁸ Each debate on a particular topic lasts for a period of one hour, with the time being equally split between the majority and the minority without unanimous consent.⁷⁹

(e) Points of Order

The Rules of the House limit the grounds on which points of order can be raised. For instance, Chapter XI deals with Procedures of Committees in the House of Representatives and Unfinished Business and states that a point of order does not lie on the ground that the hearing of a committee was not conducted in accordance with the clause providing the same. Chapter XIV provides that all questions relating to the priority of business shall be decided by a majority without debate.

measures was meeting the benefit. See also the debate of 10.02.2016, where during the Morning Hour Debate it was specified that speaking time would be divided between the majority and minority.

⁷⁶ For instance, in the debate of the House on 03.02.2016; a member of the House raised and spoke on the motion regarding immigration issues rather than blaming the executive government.

⁷⁷ The following is an extract from the debate in the House of Representatives on 10.02.2016-

“The SPEAKER pro tempore. Pursuant to the order of the House of January 5, 2016, the Chair will now recognize members from lists submitted by the majority and minority leaders for morning-hour debate. The Chair will alternate recognition between the parties, with each party limited to 1 hour and each Member other than the majority and minority leaders and the minority whip limited to 5 minutes, but in no event shall de-bate continue beyond 11:50 a.m.”

Further, see the debate of 10.02.2016 where a member raised the issue of the forthcoming legislation on Puerto Rico. [Extract: *“The SPEAKER pro tempore. The Chair recognises the gentleman from Puerto Rico (Mr. PIERLUISI) for 5 minutes.”*]

⁷⁸ See the debate of the House of Representatives of 04.02.2016, quote from the Report (this was at the beginning of the debate, after Prayers) - *“The SPEAKER pro tempore. The Chair will entertain up to five requests for 1-minute speeches on each side of the aisle.”* The same statement was made on other days as well.

⁷⁹ This practice has been described as such in the official website of the Office of the Clerk of the US House of Representatives, see 'Legislative FAQs', available at <<http://clerk.house.gov/legislative/legfaq.aspx>>, accessed on 8th April, 2016.

2. Etiquette and suspension of members for disorderly conduct

Rule XVII of the Rules govern decorum and debate in the House. Members of the House shall speak only after being recognised by the Chair and shall speak only on issues pertinent to the subject matter of the debate. Rule XVI, sub-rule 7 states that no matter not germane to the motion being discussed shall be debated.⁸⁰

Rule I of the House Rules deals with the powers of the Speaker. His duties include preservation of order in the House, and deciding questions of order which are raised in the House. Under Rule XVII, which pertains to Decorum and Debate, the powers of the Speaker to manage the debate are elaborated in sub-rule 3. The Speaker has the power to call to order the offending member, who must immediately sit down after he/ she has been called out by the Speaker.⁸¹

The US Constitution, in Article I, section 5, grants authority to Congress to discipline its own Members.⁸² The Committee on Ethics is the body responsible for overseeing the standards and conduct of the Members of Congress. This Committee publishes a Code of Conduct (one for the Senate and one for the House of Representatives). Specific allegations and inquiry into allegations against specific members of Congress are also published by the Committee. The website of the Ethics Committee also has detailed information on members against whom allegations have been made.⁸³

In addition to the Conduct of both Houses and House Rules stated above, Rulings of the Select Committee on Ethics provide guidance for governing the conduct of the members and ethical standards to be followed by them.⁸⁴ These were answers given (as far back as 1977) on specific questions related to practice and procedure that were put forth before the House by members of the US Congress.

⁸⁰ **Germaneness (7)** No motion or proposition on a subject different from that under consideration shall be admitted under colour of amendment (there is a separate provision for amendment of motions).

⁸¹ See sub-rule 4 of Rule XVII of the House Rules.

⁸² Article 1, Section 5 states in part that: *Each House may determine the Rules of its proceedings, punish its Members for disorderly behaviour, and, with the concurrence of two thirds, expel a Member.*

⁸³ See 'Statement of the Chairman and Ranking Member of the Committee on Ethics Regarding Representative Jared Polis' (*Committee on Ethics*, 14th December 2015), available at <<https://ethics.house.gov/press-release/statement-chairman-and-ranking-member-committee-ethics-regarding-representative-jared>>, accessed on 9th April, 2016. The reports of the investigation against defaulting members are made public on the website.

⁸⁴ Provided in the appendix to the Code of Ethics which is available on the official website of the Senate. Available at <http://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=efa7bf74-4a50-46a5-bb6f-b8d26b9755bf>, accessed on 13th April, 2016.

It was felt that the Rules of the House of Representatives had not been comprehensively re-codified since the 1880s. To address this, a bipartisan task force of the Rules Committee⁸⁵ developed a recodification of the Rules of the House of Representatives, which was adopted on the opening day of the 106th Congress. The Rules of the House were revised and archaic provisions were removed. This was done to ensure that the Rules become more Congress as well as people-friendly.⁸⁶

Expulsion, censure and reprimand are the main tools available to the House to punish its members for disorderly conduct.⁸⁷ The punitive measure imposed on the defaulting member depends on the extent of the disorderly conduct or violation of the Code of Conduct for both Houses mentioned previously. The provision for recording of specific instances of malpractice/violation of such Code of Conduct provides precedents for standards that should be adhered to.⁸⁸

Out of the 23 members of the House of Representatives who have been subjected to censure (according to data available up to September 2010), 10 members have been censured for their conduct during the debate which included use of un-parliamentary language and assault on another member. Out of the 10 members subjected to reprimand (till September 2010), one member has been reprimanded for misconduct in the House by '*Interrupting the President's remarks to a joint session of the House and Senate*' which was found to be a "breach of decorum and degraded the proceedings of the joint session."⁸⁹ The House of Representatives has actually expelled only five Members (four Members and one Member-elect) in its history, three of whom were expelled during the Civil War period in 1861 for disloyalty to the Union.

⁸⁵ The Committee on Rules is amongst the oldest standing committees in the House, having been first formally constituted on April 2, 1789. The Committee is commonly known as "The Speaker's Committee" because it is essentially the mechanism that the Speaker uses to maintain control of the House Floor. See 'About the Committee on Rules—History and Processes', website of the House of Representatives Committee on Rules, available at <<https://rules.house.gov/about>> accessed on 8th April, 2016.

⁸⁶ 'Floor Procedure in the U.S. House of Representatives' (*from the archives of the House of Representatives*), available at <http://archives.democrats.rules.house.gov/archives/floor_man.htm>, accessed on 8th April, 2016.

⁸⁷ In the House, a "censure" is a formal vote by the majority of Members present and voting on a resolution disapproving a Member's conduct, generally with the additional requirement that the Member stand at the "well" of the House chamber to receive a verbal rebuke and reading of the censure resolution by the Speaker of the House. See Maskell, Jack, 'Expulsion, Censure, Reprimand and Fine: Legislative Discipline in the House of Representatives' (*Congressional Research Service*, 2nd May, 2013), available at <<https://www.fas.org/sgp/crs/misc/RL31382.pdf>>, accessed on 8th April, 2016.

⁸⁸ See the Senate Ethics Manual (2003 Ed., *The Select Committee on Ethics, United States Senate*), available at <<http://www.ethics.senate.gov/downloads/pdf/files/manual.pdf>>, accessed on 10th April, 2016.

⁸⁹ Information available in the 'Appendix- Disciplinary Actions Taken by the Full House Against a Member' in Maskell, Jack, 'Expulsion, Censure, Reprimand and Fine: Legislative Discipline in the House of Representatives' (*Congressional Research Service*, 2nd May, 2013), available at <<https://www.fas.org/sgp/crs/misc/RL31382.pdf>>, accessed on 10th April, 2016.

3. Findings

In the debates studied, it was noted that provisions contained in the House Rules, such as yielding time when another member interjects, members taking the permission of the Speaker before making a statement or motion (even for those in which prior notice has been given) are followed in practice.⁹⁰ Interjections by members were dealt with in the routine course of debates without much disruption, sometimes by the speaking member agreeing to yield and reserving the remaining part of their time.⁹¹

The number of members who have actually been subjected to punitive measures is small perhaps because those found guilty of misconduct have chosen to resign before any formal action could have been taken against them (a more dignified response to being charged with misconduct than facing expulsion from the House). The defeat at the polls of Members who had engaged in misconduct was precisely the principal “ethics” oversight planned by the framers of the Constitution, who looked to the necessity of re-election to be the most efficient method of regulating Representatives’ conduct.⁹² James Madison explained in the Federalist Papers that despite all the precautions taken by structural separation of powers in the government, or by the institution of the Congress or the law, the best control of members’ conduct would be their “habitual recollection of their dependence on the people” through the necessity “of frequent elections.”⁹³

⁹⁰ See the debate of the House of Representatives on 03.02.2016, an instance that can be quoted (similar for all the debates on the other days that have been studied)- “*The SPEAKER pro tempore (Mr. DUNCAN of Tennessee). The Chair recognizes the gentlewoman from Tennessee (Mrs. BLACKBURN) for 5 minutes*”; “*The SPEAKER pro tempore. The Chair recognizes the gentleman from California (Mr. MCNERNEY) for 5 minutes*”.

See for instance, the debate of 10.02.2016, from which the following extract has been taken:

The SPEAKER pro tempore. The gentleman from Texas (Mr. SESSIONS) is recognized for 1 hour. Mr. SESSIONS. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts (Mr. CGOVERN), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

⁹¹ See the debate of 02.02.2016, the following extract from the proceedings will illustrate one such instance:

The SPEAKER pro tempore. The gentleman from Georgia (Mr. TOMPRICE) is recognised for 1 hour. Mr. TOM PRICE of Georgia. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Maryland (Mr. VAN HOLLEN), pending which I yield myself such time as I may consume. Also see debate of 04.02.2016, an illustrative instance from which is- Mr. HENSARLING. Mr. Chairman, how much time do I have remaining? The Acting CHAIR. The gentleman from Texas has 7 minutes remaining. Mr. HENSARLING. Mr. Chairman, I yield myself the balance of my time. [The latter instance is quoted to illustrate the adherence of time by members of the House of Representatives]

⁹² Maskell, Jack, ‘Expulsion, Censure, Reprimand and Fine: Legislative Discipline in the House of Representatives’ (Congressional Research Service, 2nd May, 2013), available at <<https://www.fas.org/sgp/crs/misc/RL31382.pdf>>, accessed on 9th April, 2016.

⁹³ *Ibid.* See also “The Alleged Tendency of the New Plan to Elevate the Few at the Expense of the Many Considered in Connection with Representation”, *The Federalist Papers*, No. 57, New York Packet, February 19, 1788, where Madison says: “All these sanctions, however, would be found very insufficient without the restraint of frequent elections ... as to support in the members a habitual recollection of their dependence on the people.”

Making the details of one's censure or suspension public also acts as a deterrent to engaging in disorderly conduct in the Congress. This is a feature seriously lacking in India's framework, where reprimand for disruptions or suspension from the House is rarely accompanied by structured reasons that are communicated widely. This is unfortunately true even for cases where the same disrupting members are told, repeatedly in various debates throughout the same session, that they must discontinue such disruptive behaviour.⁹⁴

C. SOUTH AFRICA

The Parliament of South Africa consists of the National Assembly and the National Council of Provinces ("NCP" or "the Council"). The Rules of Procedure of the National Assembly ("Rules of the Assembly") govern the conduct of proceedings in the National Assembly.⁹⁵ Subject to the provisions of the Constitution of the Republic of South Africa and the Rules of the Assembly, and unless altered by resolution of the House, the business on each sitting day of the Assembly follows a certain sequence of events.⁹⁶ The debates of the National Assembly from 24.02.2015 to 10.03.2015 have been studied for the purposes of understanding the practices being followed.⁹⁷

1. Devices available to Members of the National Assembly to raise issues

(a) **Motions**

Chapter 7 of the Rules of the National Assembly deals with Motions. The provisions in Chapter 7 state that no discussion shall take place twice, i.e. there can be no motion for a matter that has already been discussed on the floor of the House. Chapter 9 deals with statements made by Cabinet members and members of the Assembly. Statements are taken on Tuesdays and Thursdays, and Fridays (when the Assembly sits on a Friday) unless the Programme Committee (which decides the order of business in the National Assembly) in respect of a particular day or days determines otherwise.

In the debates studied, members often disrupted the proceedings to draw attention to motions or questions that they wished to put forth in the House for discussion.⁹⁸ Members also repeatedly raised

⁹⁴ See the tables in the Annexure to this Report.

⁹⁵ National Assembly Rules, available at <<http://www.parliament.gov.za/content/NA%20RULES%202014.pdf>>, accessed on 9th April, 2016.

⁹⁶ The list of business includes which include opportunity for silent prayer or meditation; announcements from the Chair; notices of motion; formal motions; opportunity for statements by members; opportunity for statements and personal explanations by Cabinet members; petitions; Orders of the Day and notices of motion on the Order Paper.

⁹⁷ Some of the sittings which were conducted during this time were Joint Session conducted with members of both the National Assembly and the National Council of Provinces present. The debates are available at 'Hansard' <http://www.parliament.gov.za/live/content.php?Category_ID=119>, accessed on 10th April, 2016.

⁹⁸ See the debate of the National Assembly on 26.02.2015. During the time allotted for members to raise motions, there were repeated disruptions and members were speaking against each other for raising irrelevant points. On

points of order when notices for motions were being read out at the beginning of the debate. This often led to disorder and chaos, owing to which the Speaker called the Assembly to order.⁹⁹

Additionally, members gave notice for motions they wished to raise the next day in the course of the debate. It seems that this was a common practice rather than following a pre-decided list of business.¹⁰⁰ This was perhaps a practice that took up a lot of time in the debates of the National Assembly.

(b) Questions

Chapter 10 of the Rules pertains to Questions. A member cannot ask more than two questions in one day, and notice for the same is mandatory under the Rules (Rule 108(4)). Rule 109 contains guidelines with regard to questions to Minister. Questions can be asked to the President under Rule 111, and these are to be taken up for at least one day for every term. The time allotted for questions is two hours (Rule 113).¹⁰¹ In the debates studied, the questions were addressed by the Minister or Official in-charge and were also followed up by supplementary questions on the issues raised.¹⁰²

(c) Matters of urgent public importance

Rule 104 of the Rules of Procedure deal with matters of urgent public importance. A private member may make a request for the same to the Speaker in writing. Rule 104(4) states that such a discussion shall not exceed the time allocated for it by the Speaker after consultation with the Leader of the House. In the session studied, these issues were brought up by members at a time when Members' Statements were being taken up.¹⁰³

the Speaker telling them to stop speaking out of turn. There was disruption on a point of order regarding whether there could be repetition of a motion that had already been put forth before the House. See also the debates on 10.03.2015, where in the beginning of the debate, various members made motions for issues they wished to raise in the next Session.

⁹⁹ See the debate of 03.03.2015 from what the following extract has been taken:

"Ms N R MASHABELA: House Chairperson, I hereby give notice that on the next sitting day of the House I shall move on behalf of the EFF, which is the government-in-waiting: [Interjections.] That the House debates the impact of the sugar daddy phenomenon and paedophiles in our society.

[Interjections.] The HOUSE CHAIRPERSON (Mr C T Frolick): Order, hon members!"

¹⁰⁰ See the debate of 03.03.2016.

¹⁰¹ 113(4) also places limits upon the number of Supplementary questions that can be asked (four), the reply of which cannot be more than two minutes.

¹⁰² See the debate of 04.03.2016, where the Session began with an oral question on the issue of outcomes of the working visit to South Sudan and the issues in the territory and was followed by supplementary questions on the same issues by members.

¹⁰³ See the debate of 10.03.2015, where a member brought up the issue of falsification of qualifications and the steps that should be taken by the Government to counter the same. This was followed by other issues such as

(d) Provisions available for members of the opposition to raise issues

Rule 105(2) in Chapter 9 of the Rules states that Members of each party are entitled to make a certain number of statements, minority parties being given an opportunity to participate fully. There was no explicit mention of a time set out for allowing members of the opposition to raise issues, but at the beginning of the debates various members had an opportunity to raise issues that were of importance according to them.¹⁰⁴

2. Parliamentary etiquette and suspension of members for disorderly conduct

The Parliament of South Africa has a Code of Conduct (“the Code”) which governs behavioural standards to be followed in the Parliament.¹⁰⁵ In addition, there is a Committee on Ethics and Members’ Interests which consists of 27 Assembly Members and 13 members from the Council. Chapter 10 titled “Code of Conduct and Investigation Procedures” specifies acts which constitute breaches of the Code, and procedures for investigation into such acts. When a member is found guilty of violation of the code of conduct, a complaint can be made by a person or body to the Office of the Registrar.¹⁰⁶

Penalties (provided for in Clause 10.7.7 in Chapter 10) can take the form of a reprimand, a fine (not exceeding salary of 30 days), or suspension of certain privileges or a Member’s right to a seat in Parliamentary debates or committees for a period not exceeding 30 days.¹⁰⁷ The code, however, deals primarily with issues of corruption and declaration of financial interests rather than misbehaviour of members in the National Assembly.

The Rules of the Assembly also provide for naming of a member who misbehaves in the Assembly. The provision states that the member may be suspended for the entire day (the Speaker has the

poor living conditions of people residing near mining areas and suppression of information in certain municipalities.

¹⁰⁴ See the debate of 26.02.2015, where a member brought up the issue of rolling out lightning conductors to mitigate the effects of lightning strikes, legal issues in the information technology sector etc. These were taken up as “Members’ Statement” (See Page 106 onwards of the Official Report of the debate of 26.02.2015).

¹⁰⁵ ‘Code of Conduct’, Parliament of the Republic of South Africa, available at <http://www.parliament.gov.za/live/content.php?Category_ID=83>, accessed on 9th April, 2016.

¹⁰⁶ The Registrar may then refer the complaint to the committee if the allegations warrant looking into; and the action that needs to be taken on the Report of the Registrar is decided accordingly. If required, a formal investigation may be conducted; after which a hearing may also be conducted (if required). Till the stage of the hearing, the process is confidential and not open to the public.

¹⁰⁷ In the event that the breach is minor, the House can order the member to rectify the breach and be counselled on the requirements of the code. In case the breach is serious, the House can exercise discretion and impose appropriate punishment as it deems fit. There is also provision of referral of conduct or mis-behaviour against a member (for an action which falls outside the scope of the Code) to the Chairperson or Speaker, who is authorised to take appropriate action.

power to suspend the member). Alternatively, another member may name the defaulting member, who is then dealt with by the Speaker.¹⁰⁸

In the National Assembly debates which have been studied, members sometimes resorted to using derogatory terms and words while making comments on the speeches of other members.¹⁰⁹ The Speaker in such situations berated the use of such language and asked the member to apologise. These debates were also marked by distasteful comments by members against each other, at which points the Speaker interjected and strongly criticised the behaviour and/or language of the member making such comments.¹¹⁰

One of the reasons why the sessions analysed in this Report were controversial was the demand by various political parties to address a particular issue relating to policies of the government, for which the President was repeatedly questioned.¹¹¹ During this debate, a no-confidence motion was moved against President Jacob Gedleyihlekisa Zuma. Following the motion, there were repeated disruptions and interruptions in the House. The motion was moved on various grounds, which included the fall in economic growth during his tenure, the growing violent crime in South Africa and rising corruption in the country. During this debate, members repeatedly raised points of order despite being told by the

¹⁰⁸ Rule 52 states as under:

52. Naming or suspension of member If a presiding officer is of the opinion that a contravention committed by a member of this House is of so serious a nature that an order to withdraw from the Chamber for the remainder of the day's sitting is inadequate, the presiding officer may – (a) if he or she is the Speaker, suspend the member; or (b) if he or she is not the Speaker, name the member, whereupon the Speaker, after consultation with the presiding officer, may take such action as he or she deems necessary.

Further, **Rule 57** states that a member must withdraw from the chamber while his conduct is being debated.

¹⁰⁹ See the National Assembly debate of 03.03.2015 where a member called another "coward" as a result of disagreements between them on issues and refusal to answer questions. (This was the debate where a no-confidence motion was moved against President Zuma). The following is an extract from the debate-

The SPEAKER: I have been informed that the hon member who has just entered the House shouted to the hon AgangSA member, "Coward!" I am very grateful because the hon member is just getting up. I was wondering whether this was reliable information, that it was her. Hon member?

¹¹⁰ See the debate of 03.03.2015.

¹¹¹ See the debate of 03.03.2015 of the National Assembly; Page 137 onwards of the Official Report of the debate.

Speaker to discontinue.¹¹² Even though the Speaker dismissed various points of order and privilege raised by members, the rulings of the Speaker were repeatedly disobeyed.¹¹³

3. Findings

The South African Parliament has a detailed framework consisting of rules of procedure and codes of conduct, like that of the UK, USA and Germany; however, the debates which were studied show many instances of disruptions and interruptions, along with disregard for the authority of the Speaker. A Report on the South African Parliament in 2015 has discussed issues that the Parliament has faced in the past few years.¹¹⁴ There have been three instances in 2014-15 where the members of the Parliament caused widespread and serious disruptions, which led to the Police being called into the Parliament. Further, the ongoing political tensions led two of the major Opposition parties to be absent, during the President's address.¹¹⁵

The power of suspension given to the Speaker for dealing with misbehaviour in the Assembly is broadly worded.¹¹⁶ The reason for the ineffective nature of these powers (reflected in the debates studied, which were marked by constant disruptions and interruptions) could be an issue of implementation. Members of the National Assembly displayed unruly behaviour, even when repeatedly reprimanded for disrupting its proceedings.¹¹⁷ Another feature noted in the debates studied is that of significant

¹¹² The following is an extract from the debate of 03.03.2015:

Mr M A PLOUAMMA: Hon Speaker, I have a point of order.

The SPEAKER: Hon Plouamma, you are no longer at the podium. I don't see how you think you can play games with the House. You put a motion. The House is ready to handle it. Everybody on the speakers' list is here. Please go and take your seat, hon Plouamma. [Interjections.]

¹¹³ See the debate of the National Assembly on 26.02.2015. During the time allotted for members to raise motions, there were repeated disruptions and members were speaking against each other for raising irrelevant points despite the Speaker telling them to stop speaking out of turn. There was disruption on a point of order regarding whether there could be repetition of a motion that had already been put forth before the House.

¹¹⁴ 'The South African Parliament in 2015' [A paper commissioned by the Council for Advancement of the South African Constitution (CASAC), 2015], available at <<http://www.casac.org.za/wp-content/uploads/2015/07/The-South-African-Parliament-in-2015.pdf>>, accessed on 9th April, 2016.

¹¹⁵ *Ibid.*

¹¹⁶ The duties of the Speaker fall broadly into three categories, namely -

- presiding over sittings of the House, maintaining order and applying its rules;
- acting as representative and spokesperson for the Assembly and (with the Chairperson of the Council) for Parliament; and
- acting as chief executive officer for Parliament, in conjunction with the Chairperson of the Council.

Available at <http://www.parliament.gov.za/live/content.php?Category_ID=26>, accessed on 9th April, 2016.

¹¹⁷ See the debate of the National Assembly on 04.04.2015:

time being spent on discussion on procedural issues and raising points of order while other items on the list of business were being taken up.¹¹⁸ The Rules of Procedure for the National Assembly are lacking in detail on the issue of time limits. For instances, there are no time limits specified for matters of urgent public importance. They are to be decided by the Speaker of the House in consultation with the with the Leader of the National Assembly. In the absence of such a guideline and adequate regard for the authority of the Speaker, it would be easier for a member to continue speaking (as there is no time limit laid down in black and white in the Rules of Procedure).¹¹⁹ Another issue with the procedure followed in the House seemed to the practice of no voting on motions.¹²⁰

Some of the instances of disruptive behaviour could be attributed to structuring of sessions in such a way that less time and importance is given to issues of urgent public importance, for instance, ongoing significant political controversies. However, it is not entirely clear whether these instances are circumstance-specific or whether they can be attributed to deeper, structural factors.

D. GERMANY

The Rules of Procedure for the Bundestag and Rules of Procedure for the Bundesrat govern conduct and procedure of the Parliament.¹²¹ For the purposes of our study, the Rules of Procedure (“Rules”) and Code of Conduct for the Bundestag (“Code of Conduct”) have been examined, along with

The HOUSE CHAIRPERSON (Ms A T Didiza): Hon Ndlozi, take your seat. [Interjections.] Hon Ndlozi, in respect of this issue, I have asked you to withdraw. You have refused to withdraw. I name you, hon Ndlozi. I name you, and I am sure you understand what the consequence of that is. Thank you very much. I now recognise the hon Mncwango to ask a follow-up question.

Another example from the debate is as follows:

The HOUSE CHAIRPERSON (Ms A T Didiza): Order, hon members! Hon members from the DA, I won't be able to know exactly who it is, but can you please lower your voices and allow the Minister to respond?

¹¹⁸ See the Section on “Motions” in Rules of Procedure for the South African National Assembly.

¹¹⁹ See Rule 104 of the Rules of Procedure of the National Assembly of South Africa.

¹²⁰ For instance, see the debate of 26.02.2016, wherein there was an objection to a motion, and therefore the Speaker declared that the motion fell away (the motion was regarding grievances against the Department of Social Development). See also the debate of 03.03.2015:

The HOUSE CHAIRPERSON (Mr C T Frolick): Order, hon members! I now put the motion. Are there any objections to the motion?

HON MEMBERS: Yes!

The HOUSE CHAIRPERSON (Mr C T Frolick): There are objections. The motion without notice now becomes a notice of motion.

¹²¹ The Bundestag and Bundesrat are the two Houses of the German Parliament. For details of the framework governing procedure in the Bundesrat, available at <http://www.bundesrat.de/EN/funktionen-en/go-en/go-en-node.html;jsessionid=5628A3325AB8A64A79262DD6C16003C5.2_cid382#doc5157334bodyText4>, accessed on 9th April, 2016.

secondary sources which explain the procedure followed in the Bundestag. Rule 20 of the Rules states that the agenda of the Bundestag shall be decided on by the Council of Elders.¹²² Rule 75 contains the items of business for the Bundestag.¹²³ Before the commencement of a session of the Bundestag, the members of the Bundestag (from different political groups) meet to decide the agenda for that particular session, i.e. the order of business which shall be followed on a daily basis, and if any different days of the week shall be set aside for particular items of business.¹²⁴

1. Provisions for raising issues by members of the Bundestag

(a) Motions

Rule 106 governs debate on matters of topical interest and questions put to the Federal Government. Sub-rule 1 states that debates on clearly defined topics of general current interest, conducted in the form of speeches not exceeding five minutes (debate on matters of topical interest) shall be governed by the guidelines (“Annex 5”) unless these Rules of Procedure provide otherwise.

(b) Questions

Rule 46 of the Rules of Procedure of the Bundestag deals with Questions. The Rule states that the President shall put the questions in such a form that they can be answered by a simple “yes” or “no”. Under Rule 47, a question may also be separated into parts, and a motion for the same can be moved by any member of the Bundestag. Rules 105 and 106 provide for asking questions to the Federal

¹²² The Council of Elders comprises the President of the German Bundestag, the Vice-Presidents and 23 other Members. These are not necessarily the oldest parliamentarians, but certainly need to possess great experience of political life. The Council of Elders assists the President of the German Bundestag in his or her work, helping to ensure that the business of the Bundestag is coordinated effectively and conducted as smoothly as possible. For example, it sets the dates of sitting weeks well in advance and then agrees the plenary agenda on an ongoing basis. ‘Council of Elders’, available at <https://www.bundestag.de/htdocs_e/bundestag/elders>, accessed on 9th April, 2016.

¹²³ The agenda of the Bundestag includes bills, committee reports, amendments, major interpellations addressed to the Federal Government, Motions for resolutions on bills, communications, government policy statements, major interpellations, resolutions of the European Parliament, EC items, stability measures, as well as ordinances. ‘Rules of Procedure of the German Bundestag and Rules of Procedure of the Mediation Committee’ (*Deutscher Bundestag*, May 2014), available at <<https://www.btg-bestellservice.de/pdf/80060000.pdf>>, accessed on 9th April, 2016.

¹²⁴ For instance, in the current 18th electoral term, a cross-party agreement had been reached which governed the order of items of business on the plenary agenda, debate formats, and the question of which parliamentary groups choose the topics of the two core-time debates on Thursdays (see p. 62 of the book. This agreement treated the first two items on Thursdays and Fridays - each of which normally involves a debate lasting 96 minutes - as a block and gives the opposition parliamentary groups the right to determine the subject of the second item on the agenda on either the Thursday or the Friday, with the day alternating from week to week. For the rest of the day on Thursdays and Fridays, it was agreed that the agenda would mostly alternate between items chosen by the governing coalition and the opposition parliamentary groups, and in most cases the debates scheduled on these items were relatively short. Linn and Sobolewski, ‘The German Bundestag- Functions and Procedures’, pg 59 (*NDV GmbH & Co. KG, Rheinbreitbach*, 2015), available at <<https://www.btg-bestellservice.de/pdf/80080000.pdf>>, accessed on 9th April, 2016.

Government which are governed by guidelines annexed to the Rules of Procedure.¹²⁵ Each week, Question Time shall not exceed 180 minutes in the Bundestag.

Rule 29 deals with the points of order, and the President shall give precedence to Members requesting leave to speak in order to move a procedural motion. The motion must relate to the subject under debate or to the agenda.

Members asking questions during Question Time are entitled to put up to two supplementary questions following the initial reply to their question. The President will generally permit such questions as long as they do not threaten to upset the proper conduct of Question Time. This occasionally results in a lengthy exchange of questions and answers on a specific subject, with Members from the governing coalition often participating by putting supplementary questions in support of the government.¹²⁶

(c) Matters of urgent public importance and opposition-led discussions

Though there is no particular provision in the Rules of the Bundestag referring to “matters of urgent public importance”, the Rules of Procedure provide for raising of matters of topical interest with one-day prior notice. This is provided for in Rule 106.¹²⁷ Further, Annex 5 to the Rules of Procedure of the Bundestag contains guidelines governing the matters of topical interest. The Annex 5 to the Rules of Procedure to the Bundestag also imposes a time limit of one hour for such debates.¹²⁸

As debates on matters of topical interest are designed as a minority right, they take the form of an opportunity for the opposition to place a subject of its choosing on the agenda of the plenary at short

¹²⁵ Annexure 4 of the Rules of Procedure of the Bundestag contains elaborate guidelines on the use of Question Time, and guidelines as to how the Ministers and/or their representatives are to conduct themselves in the answering of these questions. The questions are grouped according to the departmental responsibilities and the President of the Bundestag shall determine in what order these questions are to be taken. Questions that cannot be answered in the time allotted are then submitted to the Minister for a written reply.

¹²⁶ Linn and Sobolewski (n 124).

¹²⁷ **Rule 106- Debate on matters of topical interest and questions put to the Federal Government** (1) Debates on clearly defined topics of general current interest conducted in the form of speeches not exceeding five minutes (debate on matters of topical interest) shall be governed by the guidelines (Annexure 5 to the Rules of Procedure to the Bundestag) unless these Rules of Procedure provide otherwise.

(2) In weeks of sittings the Members of the Bundestag shall have an opportunity to put to the Federal Government questions of topical interest within its competence, primarily concerning the preceding cabinet meeting, however. The details shall be regulated by guidelines (Annexure 7 to the Rules of Procedure to the Bundestag).

¹²⁸ Annex 5 to the Rules of Procedure to the Bundestag contains guidelines for conducting a discussion on matters of general topical interest. Annexure 5(III) to the Rules of Procedure to the Bundestag contains information on the speaking time. It provides that if a member takes the floor after expiry of the time limit prescribed for debates on matters of topical interest, or takes the floor so late in the debate that a five-minute reply is no longer possible, one speaker from each parliamentary group shall be permitted to take the floor once more, if a parliamentary group so demands, or five per cent of the Members of the Bundestag, who shall be present, so demand.

notice.¹²⁹ Topical debates are largely a tool for the opposition to raise issues when it is not satisfied by the answers of the government in the time allotted for questioning the Federal Government in the Bundestag.

Further, speaking time in the German Parliament is decided according to the respective strength of the parliamentary groups present in the Bundestag at those points of time.¹³⁰ It also takes into account various other factors, such as a bonus for the opposition.¹³¹

(d) Points of Order

Rule 29 of the Rules of Procedure deals with points of order. It states that the President shall give precedence to those members who seek leave to speak on a procedural motion. In such a situation, opportunity shall be given to one member from each parliamentary group. Sub-rule (4) provides that no member shall speak for more than five minutes on a point of order.

(e) Interpellations

One of the devices available to members in the Bundestag is interpellations, a method of Parliamentary procedure demanding that a government official explain an act or policy.¹³² This is provided in the list of business of the Bundestag under Rule 75(f). Under Rule 101, the President shall inform the Federal Government of the major interpellation and ask it to state if and when it will answer. On receipt of the reply, the major interpellation shall be placed on the agenda. If the Federal Government refuses to reply to an interpellation, then the Bundestag may place the same on the agenda and debate must take place if a parliamentary group or five per cent of the Members of the Bundestag so demand.¹³³

¹²⁹ One special form of debate is the “debate on matters of topical interest”. It was originally introduced to give Members who were not satisfied with the reply given by the Federal Government to a question in Question Time, and regarded it as evasive or in any case inadequate, an opportunity for further discussion. Linn and Sobolewski, p.62 (n 124).

¹³⁰ A parliamentary group can be formed by at least five percent of the Members of the German Bundestag, who usually belong to the same party. The formation of a parliamentary group enables them to work together to achieve shared goals. See ‘Parliamentary Groups’, Official website of the Deutscher Bundestag, available at <https://www.bundestag.de/htdocs_e/bundestag/groups> accessed on 10th April, 2016.

¹³¹ For instance, in the 18th electoral term, if a total of one hour of speaking time is available, the CDU/CSU parliamentary group is allocated 27 minutes, the SPD 17 minutes, and the Left Party and Alliance 90/The Greens parliamentary groups 8 minutes each. Linn and Sobolewski, p.62 (n 124).

¹³² Rules 100-104 of the Rules of Procedure govern interpellations in the Bundestag. See also Speer, S., Pattyn, V. and De Peuter B. ‘The Growing Role of Evaluation in Parliaments: Holding Governments Accountable’(2015), *International Review of Administrative Sciences*, 81 (1), 37-57; which states: “Major interpellations usually consist of long lists of questions, sometimes more than two hundred relating to a specific area or topic. These are handed in by a fraction of the opposition or government parties, but alternatively can also be asked by a minimum of 5% of total MPs. It often takes a few months until the government answers these questions. The major interpellation is stronger in its effect because the government’s answer can be discussed in parliament.”

¹³³ See Rule 102 of the Rules of Procedure of the Bundestag.

2. Parliamentary etiquette and suspension of members for disorderly conduct

Rule 27 of the Rules of Procedure of the Bundestag state that members shall seek the leave of the Speaker before commencing their speeches.¹³⁴ Under sub-rule (2), it is provided that if a member wishes to intervene, he/she may do so by switching on their microphone and put this question or make these remarks, which must be brief and concise, only if the Speaker, following a question to that effect by the President, has consented.¹³⁵

Provisions for interjecting or speaking during a debate are covered under Rule 30 of the Rules of Procedure of the Bundestag. The President may give precedence to Members requesting leave to speak in order to make a statement in the course of the debate. The Member concerned shall inform the President of the reason for his/her statement when requesting leave to speak. He/she may deliver a statement on the debate only in order to rebut any remarks that have been made about his/her person in the course of a debate or to correct observations that the Member himself/herself has made, and the statement may not last more than five minutes.¹³⁶

The German Parliamentary debates are characterised by relatively less activity (as compared to the UK or the US). To make the debates livelier and interesting, the aforementioned Rule 30, which allows the members to intervene during a debate, is evoked by the Speaker.¹³⁷ A question may also be introduced by a statement, made independently of the question. However, to keep to the time of the debate, this intervention is not permitted for more than three minutes.¹³⁸

The time limit for debate on a particular item of business shall be decided by the Council of Elders, and if no agreement is reached, is limited to fifteen minutes (and can be extended to forty five minutes and no more).¹³⁹ That said, in the 17th electoral term there were several occasions when Members who wanted to present a divergent view from that of their parliamentary group, and who therefore had not been nominated as speakers by their group, were given leave to speak as additional speakers - outside the speaking time allocated to the parliamentary group in question - in recognition

¹³⁴ Rule 27- Leave to speak and request for leave to speak (1) Members of the Bundestag may take the floor only if given leave to do so by the President. If the President wishes to speak in the debate, he or she shall vacate the Chair for that purpose. Members of the Bundestag who wish to speak on the subject under debate shall, as a rule, inform the Secretary who keeps the list of speakers. Members of the Bundestag who wish to raise a point of order or to make a statement may do so by intervention.

¹³⁵ See sub-rule (2) of Rule 27 of the Rules of Procedure of the Bundestag.

¹³⁶ See Rule 30 of the Rules of Procedure of the Bundestag. See also Sub-rule (3) of Rule 35 which gives the power to the President to disallow a member to continue speaking should he/she exceed the time limit. Under Rule 36, the President may also call upon Speakers who digress from the subject matter of the debate.

¹³⁷ Linn and Sobolewski, p. 63 (n 124).

¹³⁸ See Rule 35 "Speaking Time" of the Rules of Procedure of the Bundestag.

¹³⁹ *Ibid.*

of their constitutionally guaranteed right to speak. In such cases, the speaking time assigned to Members is based on the agreed allocation for Members who are not attached to any parliamentary group.¹⁴⁰

Rule 38 governs the suspension of members from the Bundestag.¹⁴¹ A Member of the Bundestag may be suspended for up to thirty sitting days. Rules 40 and 41 also deal with measures that can be taken by the President for maintenance of order. The framework, therefore, gives a wide remit of powers and discretion to the President of the Bundestag to take steps to ensure that the members do not behave in a disorderly manner. Suspension of a member is the most controversial measure undertaken to maintain order in the Bundestag. The practice regarding suspension of members seems to be fairly strict in the Bundestag.¹⁴² In the past, there have been some instances of suspension of members from the Bundestag for misbehaviour in the House such as wearing clothing which contained offensive material printed on it. While there are ample provisions available for members to raise their issues and express themselves in different ways under the Rules of Procedure, the Parliament comes down heavily on those attempting to disrupt proceedings or raise issues in ways not permitted in the rules governing conduct and debate.¹⁴³

3. Findings

It is not uncommon for disagreements between members of the Parliament to occur during the parliamentary debates. For instance, the current session has seen various disagreements between members of different political parties regarding issues of asylum seekers and refugees in the country.¹⁴⁴ In 2014, the then President of the Bundestag called the Question Time the “weakest part

¹⁴⁰ Linn and Sobolewski, p. 59 (n 124).

¹⁴¹ Rule 38(1) of the Rules of Procedure of the Bundestag states that: The President may order a Member of the Bundestag who has committed a serious breach of order or failed to respect the dignity of the Bundestag to leave the Chamber for the remainder of the sitting even if he or she has not been called to order or no fine has been imposed. Before the sitting is closed the President shall announce for how many sitting days the Member in question will be suspended.

¹⁴² There was an instance where a member of the Bundestag was suspended for viewing pornographic material on his laptop in the Bundestag. See 'Indian Origin ex-German MP suspended from the Social Democratic Party' (*The Economic Times*, 2nd June, 2015), available at <<http://economictimes.indiatimes.com/news/international/world-news/indian-origin-ex-german-mp-suspended-from-the-social-democratic-party/articleshow/47512413.cms>>, accessed on 10th April, 2016.

¹⁴³ For example, there was an instance of seven members being banned from three session of the German Parliament for wearing attire which contained offensive material. 'Far right lawmakers expelled from German Parliament for wearing clothing labels favoured by Neo-nazis' (*Mail Online*, 14th June, 2012), available at <<http://www.dailymail.co.uk/news/article-2159169/Far-Right-lawmakers-expelled-parliament-Saxony-Germany-wearing-Thor-Steinar-clothing-label-favoured-neo-Nazis.html>>, accessed on 10th April, 2016. There was another incidence where members were suspended temporarily from the German Parliament for holding up placards naming people who had been killed in an Air-strike. See 'Germany's Left Party expelled from Bundestag [only temporarily]' (*The Irish Times*, 27th February, 2010), available at <<http://www.freerepublic.com/focus/news/2460434/posts>>, accessed on 10th April, 2016.

¹⁴⁴ Martin Kreikenbaum, 'German parliament prepares crackdown on refugees' (*World Socialist Website*, 2nd October, 2015), available at <<https://www.wsws.org/en/articles/2015/10/02/germ-o02.html>>, accessed on

of German parliamentary democracy” and “politically meaningless”.¹⁴⁵ Since there is no direct questioning of the Chancellor and her Ministers, there is relatively less or no debate around Question Time, and Ministers usually assign the task of answering questions to individuals authorised to do so.¹⁴⁶

The lack of debate and discussion during Question Time could be due to the lack of time spent on serving constituents in Germany. Only 50 percent of Bundestag deputies are directly elected to represent a specific geographic district; the other half are elected as party representatives.¹⁴⁷ The political parties are thus of greater importance in Germany’s electoral system which might be a reason for limited public debate in the Bundestag.¹⁴⁸ It has also been said that the debates in the Bundestag are lacking in passion and excitement, possibly due to heavy preparation that goes behind the highly specific and detailed debates that occur in the Bundestag.¹⁴⁹

The Bundestag does a significant amount of legislative deliberation and work through its committees.¹⁵⁰ The Rules of Procedure refer to the committees as “bodies responsible for preparing the decisions of the Bundestag”.¹⁵¹ These are highly specialised committees, and their work involves looking into specific issues for which they have been formed. The recommendations given by these committees for decisions (of the Bundestag) may relate only to items of business that have been referred to such committees, or to questions directly connected with their mandate.¹⁵² The reports of these committees need to be submitted under a specified period of time. In case they are not, the

10th April, 2016; See also ‘German Parliament Debates Reforms’ (*Deutsche Welle*, 30th March 2006), available at <<http://www.dw.com/en/german-parliament-debates-reforms/a-1949093>>, accessed on 10th April, 2016.

¹⁴⁵ ‘Order, order!’ (*The Economist*, 18th October, 2014), available at <<http://www.economist.com/news/europe/21625796-many-germans-crave-less-boring-bundestag-including-its-own-president-order-order>>, accessed on 10th April, 2016.

¹⁴⁶ *Ibid.*

¹⁴⁷ See ‘Germany- the Legislature- Country Studies’, available at <<http://countrystudies.us/germany/154.htm>>, accessed on 10th April, 2016.

¹⁴⁸ *Ibid.*

¹⁴⁹ “The speeches often deal in detail with highly specialised issues and therefore have to be thoroughly prepared; this explains why these debates are not always particularly spontaneous and why Bundestag sittings can seem lacking in passion and excitement, with few Members even in the plenary chamber in many cases.” Linn and Sobolewski, p. 61 (n 124).

¹⁵⁰ See ‘Function and Responsibilities’, available at <https://www.bundestag.de/htdocs_e/bundestag/committees/function/245820>, accessed on 10th April, 2016.

¹⁵¹ See **Rule 62 of the Rules of Procedure of the Bundestag**. The relevant part of **Rule 62(1)** is as follows: The committees shall be obliged to attend to matters referred to them without delay. As bodies responsible for preparing the decisions of the Bundestag, they shall be under a duty to recommend to the Bundestag definite decisions that may relate only to items of business referred to them or to questions directly connected therewith.

¹⁵² Linn and Sobolewski, p. 37-40 (n 124).

committee may be told to (on a request by the members of the Bundestag) report its discussions in the Bundestag. This becomes an important tool for the Opposition in the Bundestag to ensure that there is some amount of pressure on the committees to complete their business in a fixed period of time.¹⁵³

E. LESSONS FOR INDIA

Drawing from the practice in the jurisdictions studied, it seems that the unaddressed problem areas in India's framework pertaining to parliamentary functioning are two-fold- first, the lack of deterrents for crossing the limits of permissible interruptions in Parliament, and second, structural issues in the conduct of debates. The following are some lessons and suggestions which could be a step towards ensuring greater discipline in the Houses of the Indian Parliament, and higher levels of productivity in the debates.

1. Reduction of salaries of suspended Members as a deterrent against misbehaviour

The reduction of salaries of MPs in accordance with the period of suspension can serve as an effective deterrent for members to prevent them indulging in behaviour that could result in suspension from the House. Though this power is scarcely used in the jurisdictions studied, the fact of its availability might be a key determinant in ensuring less disruptive behaviour. For instance, Rule 45A of the Standing Orders of the House of Commons provides for reduction of the salary of the members who have faced suspension.¹⁵⁴ The Rules of the National Assembly in South Africa¹⁵⁵ also provide for reduction of salaries of suspended members.

2. Careful Structuring of Sessions and Debates

(a) **Provision for Opposition-led discussion in the House**

Dedicated time for opposition-led discussion was a feature incorporated in the parliamentary rules of the jurisdictions studied. For instance, the framework governing procedure in the House of Commons provides for dedicated time for conduct of Backbench debates; ensuring that those members who are not members of the Cabinet or the Shadow Cabinet are given an opportunity to

¹⁵³ *If, for whatever reason, a committee's deliberations on a given item of business are delayed, ten weeks of sittings after referral of the item in question a parliamentary group or five per cent of the Members of the Bundestag, i.e. currently (at least) 32 Members, may demand that the committee submit a Report on the progress of its discussions. If a Report is requested, it must be placed on the agenda of the Bundestag. This is an instrument by means of which a minority, and in particular the opposition, can put pressure on the committees to complete their deliberations on a given item. However, ten weeks of sittings are a long time; they may cover up to six months.* Linn and Sobolewski, p. 38 (n 124).

¹⁵⁴ 45A- The salary of a Member suspended from the service of the House shall be withheld for the duration of his suspension.

¹⁵⁵ Penalties (provided for in Clause 10.7.7 in Chapter 10 of the Code of Conduct for the National Assembly) can take the form of a reprimand, a fine (not exceeding salary of 30 days).

raise issues of public importance in the debates. In addition, Tuesdays are “Opposition Days” in the House of Commons. The Committees and Major Interpellations in the German Bundestag also serve as an effective tool for the Opposition to discuss issues of policy and implementation with the government.¹⁵⁶ These serve as important methods for individual MPs to express themselves in the House.

(b) Provision for Prime Minister’s Questions

Every Wednesday in the House of Commons in the UK, the Prime Minister is required to compulsorily attend the debates, to participate in time dedicated for PMQs, during which the members may put questions relating to policy and legislation to the Prime Minister. In the debates studied, this was particularly helpful in allowing members to address issues of current national importance.¹⁵⁷ A provision which ensures the presence of the leader of the Cabinet/government in a House of Parliament would also ensure that the members of the Opposition can avail of the opportunity to address policy issues by engaging directly with the Prime Minister.

(c) Asymmetric structuring of sessions with sufficient flexibility

The UK, US and Germany have clarity at two levels- first, the day-to-day structuring of the sessions; second, there are specific days in a week allotted to specific kinds of business of the particular legislative body (for instance, Wednesdays in the House of Commons have dedicated time for Prime Minister’s Questions).¹⁵⁸ However, there is sufficient flexibility in the debates to allow for issues of public importance to be raised during the debates. Flexibility in the structuring of the sessions could also go a long way to ensure reduction of time wasted as a result of disruptions and interruptions, as well as to ensure that crucial aspects of effective parliamentary functioning, such as opposition-led discussion or Prime Minister’s Questions continue unhindered. In the House of Commons (UK) as well as the House of Representatives (US), the order of business is read out daily in the debates of these Houses. This ensures that members have a fair idea of what to expect regarding the debate and business addressed for that particular day.

¹⁵⁶ This is in the form of major interpellations; which are essentially questions targeted at the government to hold it accountable. See Rules 100-103 of the Rules of Procedure of the Bundestag. For details, see the provisions available to members of the Opposition in the Bundestag in the section titled “Germany” above in this Chapter of this Report.

¹⁵⁷ More specifically, the issue of UK’s membership to the EU. There was extensive questioning of the current Prime Minister on the Government policy regarding the same. For details, see the House of Commons debate on 10.02.2016.

¹⁵⁸ In India, the debates studied in Chapter 1 reveal that largely, the conduct of business on every day of the week is more or less the same. Due to the large number of disruptions and interruptions on a particular day, the debate on certain issues spills over to the second day and causes a large amount of time of the House of be wasted.

The absence of specific time-limits for different kinds of business in the Houses is another feature missing in India's framework. For instance, under the Lok Sabha Rules, the Speaker has the discretion to prescribe time limits, if any, for the motions.¹⁵⁹ In the provision of the Lok Sabha Rules pertaining to questions, there is a broad limit of time laid down for the Question Hour, but no specific guidelines as to the time-limit prescribed for individual questions. In this regard, delineation of time limits together with strict enforcement thereof is necessary.

¹⁵⁹ See Rule 192 in Chapter XIV of the Rules of Procedure and Conduct of Business in the Lok Sabha.

IV. DISRUPTIONS IN THE RAJYA SABHA AND BICAMERALISM IN INDIA

A key inference from the analysis of the parliamentary sessions in Chapter II above is that disruptions are widespread, not just in the popularly elected Lok Sabha, but in the indirectly elected Rajya Sabha as well. In RS I, there were 32 productive hours as opposed to 72 hours of disruptions. In the 32 productive hours, only 30% (approximately 11 hours) were spent on legislative business. In RS II, the number of productive hours were down to 9, with disruptions amounting to 72 hours. Less than 10% (approximately 1 hour) was spent on legislative business. In fact, in RS II, disruptions in the Rajya Sabha exceeded those in the Lok Sabha.

In political theory, a second chamber of Parliament is advocated to prevent haste in legislative activity and check the possibility of an untrammelled executive.¹⁶⁰ In addition, such a chamber, according to John Stuart Mill, is expected to follow a different logic of representation in comparison to the one which is popularly elected.¹⁶¹ Both these rationales have been subject to considerable criticism, particularly by Jeremy Bentham. According to him, if second chambers espouse a different principle of representation, then they are likely to entrench particular interests antithetical to popular democracy; on the contrary, if they merely replicate the existing house, then they are superfluous.¹⁶² A scrutiny of these rationales and criticisms is beyond the remit of this Report. Suffice it to say that countries in the world bear testimony to both these points of view— out of 192 countries surveyed by the Inter-Parliamentary Union, 115 have unicameral legislatures;¹⁶³ in the remaining 77 countries, approximately 65% of total seats of all countries combined were filled through methods other than direct election thereby espousing a distinct logic of representation.¹⁶⁴

Both points of view, supporting and opposing second chambers, were debated by the Drafting Committee in the Constituent Assembly. The basis for much of the discussion was an extensive

¹⁶⁰ Jeremy Waldron, “Bicameralism and the Separation of Powers” (2012) , Current Legal Problems 65(1), pg. 31.

¹⁶¹ John Stuart Mill, *Considerations on Representative Government* (London, Elecbooks, 2011) p. 237-241.

¹⁶² Jeremy Bentham, *The Works of Jeremy Bentham Vol. IV: Online Library of Liberty* (John Bowring ed., Edinburgh, William Tait, 1838-43) p. 689-693, available at <<http://oll.libertyfund.org/titles/1920>>, accessed on 12th April, 2016.

¹⁶³ ‘Parliaments at a glance: Structure’, website of the Inter-Parliamentary Union, available at <<http://www.ipu.org/parline-e/ParliamentsStructure.asp?REGION=All&LANG=ENG>>, accessed on 12th April, 2016.

¹⁶⁴ Available at <http://www.ipu.org/parlinee/ModeOfDesignation.asp?LANG=ENG®ION_SUB_REGION=All&typesearch=5&Submit1=Launch+query>, accessed on 12th April, 2016. For variations in different forms of bicameral systems, see Samuel C Patterson and Anthony Mughan, “Fundamentals of Institutional Design: The Functions and Powers of Parliamentary Second Chambers” (2001), *Journal of Legislative Studies* 39.

questionnaire prepared by the Constitutional Adviser BN Rau, which was sent to all members of the Central and Provincial Legislatures for their views.¹⁶⁵ In this questionnaire, Rau extracted the key features of bicameral legislatures of UK, USA, Australia, Canada, Switzerland, Ireland and South Africa. He also summarised the key arguments advanced by proponents and detractors of second chambers, which in turn derived greatly from the views of Bentham and Mill mentioned above. On this basis, Rau circulated a detailed Memorandum and Draft Clauses to the Union Constitution Committee. This provided the foundation for the composition and powers of the Council of States and the House of the People— the Council of States would be a permanent body with one-third MPs retiring every two years, elected by members of the State Legislatures in proportion to the population of the states, and with the total number of members not exceeding one-half of the House of the People. The House of the People would be a body elected directly every five years. Both Houses had coextensive powers over all legislation except Money Bills, which could not be introduced or rejected by the Council of States. In case of disagreement between the Houses, provision for a joint sitting was made. Further, the Council of States also had the power to pass a resolution that a matter in the State List should be legislated on, by Parliament, in national interest.¹⁶⁶ The final Report of the Union Constitution Committee contained most of these recommendations.¹⁶⁷

When the Report was debated on the floor of the Assembly, several members, such as HV Kamath and Mohammad Tahir felt that the Rajya Sabha would be an aberration, entrenching colonial and class interests.¹⁶⁸ These views had earlier been voiced by Jayaprakash Narayan in his strongly worded response to the Draft Constitution. Narayan had opined that a second chamber would be “a check to progress”.¹⁶⁹ This is because, according to him, indirect election, as was mandated for the Rajya

¹⁶⁵ The Questionnaire issued by the Constitutional Adviser, March 17, 1947, B. Shiva Rao (ed.), *The Framing of India's Constitution*, Vol. 2 (New Delhi: Universal Law Publishing, 1967) 433 at 441. (“Shiva Rao”)

¹⁶⁶ Article 249 (1) of the Constitution reads,

“Power of Parliament to legislate with respect to a matter in the State List in the national interest

(1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.”

¹⁶⁷ Report of the Union Constitution Committee, July 4, 1947 in Shiva Rao, Vol. 2, 574, at 581; See also Minutes of the Union Constitution Committee, June 9, 1947 in Shiva Rao, Vol. 2, 556-57; N Gopalaswami Ayyangar and Alladi Krishnaswami Ayyar, Memorandum on the Principles of the Union Constitution Select Documents in Shiva Rao, Vol. 2, 540, at 542.

¹⁶⁸ HV Kamath, 18th July 1947, available at <<http://parliamentofindia.nic.in/ls/debates/vol4p5.htm>>, accessed on 12th April, 2016; Per Mohd. Tahir, 28th July 1947 available at <<http://parliamentofindia.nic.in/ls/debates/vol4p11.htm>>, accessed on 12th April, 2016.

¹⁶⁹ Jaya Prakash Narayan, Comments and Suggestions on the Draft Constitution, Shiva Rao, Vol. 4, 90.

Sabha, would not foster popular accountability. The protection against any feared overreach by the executive would be secured by the scheme of distribution of powers in the Constitution, together with judicial review.

Other members such as N Gopaldaswami Ayyangar¹⁷⁰ and Naziruddin Ahmad¹⁷¹ believed that sober debate on crucial legislative matters would be necessary and could be provided by a second chamber. Sardar Patel advocated a middle ground— while a Council of States would be a useful forum for provincial representation at the Union level, at the level of particular provinces, the choice should be left to the legislatures of the provinces themselves.¹⁷²

After considerable debate, the Constituent Assembly resolved to establish a Council of States. Such a House was necessary *per se* since legislating for the country was a serious matter which required considerable thought and scrutiny. Specifically, the Rajya Sabha would be a house of ‘second thought’¹⁷³ that was expected to bring an ‘element of sobriety’¹⁷⁴ into parliamentary debate. Further, it was meant to underline the federal character of the Constitution by acting as the representative of States at the Union level. The rationales were both *intrinsic*— owing to the significance of the law-making function, and *instrumental*— fostering sober debates and providing representation to state interests.

Constant disruptions in the Rajya Sabha, as has been demonstrated in the analysis in Chapter II, require us to revisit these foundational rationales. On the one hand as a practical matter, a disruptive Rajya Sabha has the salutary effect of exercising a check on governmental action. But it was not intended either as a matter of design or theory that such checks would be through disruption, rather than debate and deliberation. As a result, while the ultimate objective of a second chamber is achieved, the means effectuating such achievement are based on a fundamental repudiation of the sober and dignified role the Rajya Sabha was expected to perform.

This view is buttressed by the causes for disruption in the Rajya Sabha. If the specific causes for each disruption in the two Sessions under consideration are analysed, it is evident that they primarily involve matters of immediate controversy or general issues of public importance. For example, the

¹⁷⁰ N Gopaldaswami Ayyangar, 28th July 1947 available at <<http://parliamentofindia.nic.in/ls/debates/vol4p11.htm>>, accessed on 12th April, 2016.

¹⁷¹ Naziruddin Ahmad, 28th July, 1947, available at <<http://parliamentofindia.nic.in/ls/debates/vol4p11.htm>>, accessed on 12th April, 2016.

¹⁷² Sardar Patel, 15th July 1947, available at <<http://parliamentofindia.nic.in/ls/debates/vol4p2a.htm>>, accessed on 12th April, 2016.

¹⁷³ Naziruddin Ahmad (n. 171).

¹⁷⁴ *Ibid.*

prime causes for disruption in RS I were arrest of Tamil fishermen by Sri Lanka, riots in Muzaffarnagar and the formation of the new State of Telangana. Similarly, in the RS II disruptions pertained to alleged misconduct by members of the Cabinet as well as a range of contemporary issues.¹⁷⁵ It is evident that disruption on such issues, or the range of matters of public importance owing to which the Rajya Sabha was disrupted, have little to do with providing ‘an element of sobriety’ on matters of legislative business. In fact, they do not relate to legislative business at all. Even on such matters of immediate public importance and controversy, it is evident that the viewpoints of Rajya Sabha members did not lead to meaningful debate. On the contrary, disruptions are significantly higher in RS II when compared to LS II.

The close alignment of reasons for disruption both in the Lok Sabha and the Rajya Sabha bring into question the representational logic of the Rajya Sabha itself. Upper Houses derive their legitimacy partly from the fact that their representational logic is distinct from the Lower House.¹⁷⁶ Were they to be identical it would lead to superfluity. This is precisely why the framers of the Constitution conceptualised the Rajya Sabha as a Council of States, with a maximum of 238 members elected by members of the State Legislatures by proportional representation with the remaining 12 members being nominated by the President for their eminence in diverse fields.¹⁷⁷ Thus it is evident that the composition of the Rajya Sabha was intended to be markedly different from the Lok Sabha, which is directly elected.¹⁷⁸

Despite this, there is a marked congruity in the incidence of disruptions together with the frequency of such disruptions, often with the Rajya Sabha outdoing the Lok Sabha in this regard. This is best explained by the fact that though the method of election is distinct, the persons so elected are largely similar insofar as they predominantly belong to political parties. Out of 232 elected members as on date,¹⁷⁹ 225 belong to particular political parties. Of the remaining seven, five are independent, whereas 2 (Ram Jethmalani [BJP] and Pyarimohan Mahapatra [BJD]) were members of the parties which nominated them, but were subsequently expelled. Of the 10 nominated members, 8 are independent whereas 2 are members of the party which nominated them (Mani Shankar Aiyar and Bhalchandra Mungekar [both INC]).

There are two key inferences from these numbers. First, that 22 out of 232 elected members, many of whom are current Cabinet ministers or ministers in the previous government, do not belong to the

¹⁷⁵ Relevant portions in the Annexure to this Report.

¹⁷⁶ Mill (n 161).

¹⁷⁷ Article 80 of the Constitution of India.

¹⁷⁸ The only exception can be seen in Article 331 which allows the President to nominate no more than two members from the Anglo-Indian community to the Lok Sabha if it is not “adequately represented”.

¹⁷⁹ These figures are valid as on 3.2.2016 when they were collected and might have changed subsequently.

state which they represent. This demonstrates that apart from representing state interests, the Rajya Sabha also provides a route for otherwise unelected persons to assume ministerial positions. Whether this is desirable or not is an entirely different question, beyond the remit of this Report.¹⁸⁰ However, when read with the fact that the reasons for disruptions in the Rajya Sabha have little to do with interest of states being articulated, it is evident that the Rajya Sabha is substantively similar to the Lok Sabha in composition and functioning, although the method of its election might be distinct.

Second, despite differences pertaining to gender, caste and other ascriptive factors that might exist, the majority of members, 227 out of 242, are members of political parties. Given the fact that the composition of the Rajya Sabha is both largely political, and is not necessarily related to state interests, it is inevitable that it mirrors the Lok Sabha in planned disruptions by political parties being the norm.¹⁸¹ Further, the norm is only reinforced when no party has a clear majority in the Rajya Sabha, making it amenable to greater disruption, in comparison with the Lok Sabha. This is a possible reason for the marked increase in disruptions in RS II when no party was in absolute majority only in the Rajya Sabha, and not in the Lok Sabha, as opposed to the Winter Session of 2013, when no party was in absolute majority in either House.

This combination of inferences creates an anomalous situation. The reason why the Rajya Sabha is an effective check and balance on government in theory is owing to the difficulty of one party securing a majority in both the Union and a majority of States. Both the Sessions of the Rajya Sabha studied in Chapter II bear out this theoretical possibility. In neither Session, did the government which had a majority in the Lok Sabha, command a majority in the Rajya Sabha. However, though the end of ensuring a check and balance on government was served, the envisaged means by which second chambers are expected to serve this end— ensuring a diversity of views, providing greater legitimacy, and a sober second thought— remained unfulfilled. With the members in the Rajya Sabha largely belonging to the political class, the prospect of greater popular legitimacy or diversity of views, shorn of the mere addition of number of representatives, is remote notwithstanding its distinct

¹⁸⁰ The legal validity of such a practice upheld by the Patna High Court in *Harendra Pratap Singh v. Narendra Damodardas Modi and others* (Civil Writ Jurisdiction Case No.12371 of 2014), available at <<http://indiankanoon.org/doc/43560496/>>, accessed on 12th April, 2016.

¹⁸¹ This was predicted by Mill who suggested a differently composed second chamber as a remedy. He writes,

“The deficiencies of a democratic assembly, which represents the general public, are the deficiencies of the public itself, want of special training and knowledge. The appropriate corrective is to associate with it a body of which special training and knowledge should be the characteristics. If one House represents popular feeling, the other should represent personal merit, tested and guaranteed by actual public service, and fortified by practical experience. If one is the People’s Chamber, the other should be the Chamber of Statesmen; a council composed of all living public men who have passed through important political offices or employments. Such a Chamber would be fitted for much more than to be a merely moderating body. It would not be exclusively a check, but also an impelling force. In its hands the power of holding the people back would be vested in those most competent, and who would generally be most inclined, to lead them forward in any right course.” Mill (n 161).

representational logic. At the same time, the general lack of legislative business in the Rajya Sabha together with the high incidence of disruptions makes any sobriety rationale suspect.

Thus owing to its similarity in composition with the Lok Sabha and high level of disruptions in operation, the Rajya Sabha is, in several respects, akin to a superfluous second chamber. At the same time, in effect, it ensures a check and balance on an untrammelled government. This disjunct between operations and effect can be remedied in two ways— by modulating either the powers of the Rajya Sabha or its structural composition.¹⁸² Adopting the former course would undo the salutary check and balance function that the Rajya Sabha performs. Were the powers of the Rajya Sabha in initiating and passing legislation curtailed, governments would be able to push through legislative business without any effective parliamentary scrutiny. Especially given the fact that governments in India are not always coalition formations, such complete command of the Parliament by a one-party government needs to be guarded against.¹⁸³

On the contrary, subjecting its composition, and consequently its representational dynamic to greater scrutiny might revitalise the Rajya Sabha into performing the check and balance function it was intended to by the framers of the Constitution, in a manner befitting a modern democracy. The intended representational logic of the Rajya Sabha was two-fold— first, members who are not directly elected by the people and instead by legislators through proportional representation, i.e. representing the polity but in a different manner from the Lok Sabha; second, those who would function as representatives of state interests at the Union level. Further, several members were expected to be apolitical, nominated for their eminence in particular fields. This logic might continue to be valid in fact, though not serving its intended objectives.

While indirect election still continues, from the practice of the Rajya Sabha studied in Chapter II, it is clear that no particular states' interest is generally espoused. Further, the effect of this distinct representational logic has been to throw up members of the political class, even amongst nominated members. Hence it has not checked government through its sobriety or dignified debate as had been expected. If these goals envisaged for the Rajya Sabha, both by the framers of the Constitution, as well as in political theory are to be met it requires a relook at the composition of the Rajya Sabha

¹⁸² A third alternative is to do away with the Rajya Sabha altogether. However no serious suggestion to this effect has been made and the reasons if at all are wider than disruptions and cannot be considered fully here. For a brief conspectus of such reasons, see Narayan Ramachandran, "Is the Rajya Sabha essential?" (*Mint*, 20th September 2015), available at <<http://www.livemint.com/Opinion/ZhlriTSTMkik4PP5p6xSWI/Is-the-Rajya-Sabha-essential.html>>, accessed on 12th April, 2016; NV Krishnakumar, "Rajya Sabha is a Relic of the Past" (*The Times of India*, 10th September 2013), available at <<http://timesofindia.indiatimes.com/edit-page/Rajya-Sabha-is-a-relic-of-the-past/articleshow/22441513.cms>>, accessed on 12th April, 2016.

¹⁸³ This is essential in order to serve the goal of checks and balances on representative government, one of the foundational rationales for a second chamber. See Waldron (n 160). It is equally essential since the significance of legislation means that it warrants a second opinion. See Adrian Vermuele, "Second Opinions and Institutional Design" (2011) 97 *Virginia Law Review* 1435.

and how best it can achieve its end of checking and balancing government while staying true to its foundational rationale of being a more deliberative House. This is done in Chapter VI, at the end of the Report.

V. RESTRICTIONS ON PRIVILEGES OF A MEMBER OF PARLIAMENT

As the centrepiece of democracy, Parliament attaches utmost importance to privileges of an MP. Such parliamentary privileges are believed to be critical to Parliament's success as an institution of debate and deliberation.¹⁸⁴ Two are of fundamental importance and relevance to our Report— first, an MP's freedom of speech under clause (1) of Article 105 of the Constitution; and second, his right to speak or vote on any matter within Parliament under clause (2) of Article 105 without his actions being called into question in a court of law. According to notable scholar Subhash C. Kashyap, these absolute privileges of speech and vote have been granted to an MP in order to allow her to express her opinion freely within Parliament, without the apprehension of adverse consequences of any kind.¹⁸⁵ In recent times, however, the emphasis on homogeneity of opinion within political parties has, in some sense, diluted the purpose of these privileges. Our hypothesis in this Section is that disruptions by certain MPs in Parliament may, in part, be attributable to this development.

At present, if an MP attempts to express her opinion in Parliament by means of a speech or vote, which is not in absolute agreement with the opinion of the leaders of the party she represents, she runs the risk of being expelled from her party for allegedly engaging in anti-party activities, or worse still defecting, by voting against her party. As a result, it is plausible that the MP is unable to express her mind freely, a privilege she is entitled to under Article 105 of the Constitution. Thus if the party takes a stance to disrupt proceedings, an MP will have no option but to support the extant disruptions.

A. ANTI-PARTY ACTIVITY

As noted before, there exists no definitional clarity on what constitutes anti-party activity.¹⁸⁶ Consequently, political parties are capable of expelling their MPs in the name of an anti-party activity without significant checks and balances. In the Winter Session of 2013-2014, for instance, the INC expelled 6 of its members from LS I for anti-party activities. As is evident from the information in the Annexure to this Report, these members belonged to the Seemandhra region of Andhra Pradesh and had fiercely expressed their disapproval of the division of Andhra Pradesh under the Andhra Pradesh Reorganisation Bill, 2014 ("Telangana Bill"). Disorderly conduct by these members

¹⁸⁴ Dr. Subhash C Kashyap, *Anti-defection Law and Parliamentary Privileges* (3rd Edn. , Universal Law Publishing Company, 2011), pg. 1173-1174.

¹⁸⁵ *Ibid* at pg. 110-112.

¹⁸⁶ The term 'anti-party' has not been defined under the Constitution, or under any other law. The cases that make a reference to such activities also do not define the exact contours of what constitutes an anti-party. For reference, please see *Rahim Khan vs Khurshid Ahmed & Ors*, (1974) 2 SCC 660; *Baldev Singh Mann v. Surjit Singh Dhiman*, (2009) 1 SCC 633; *Shrikant v. State of Maharashtra*, (2015) 2 Mah LJ 794; *S. Thirunavukkarasu v. J. Jayalalitha and Ors.*, (1997) 3 CTC 229

demonstrated their frustration of not having been heard by their own party. However, the INC, which was in support of the Bill, went ahead and expelled all 6 members for so-called anti-party activities. This act of expulsion was carried out in order to subdue dissent and compel all their members to strictly adhere to the INC's party line, which was in support of the Telangana Bill.

Such acts of expulsion demonstrate also the lack of internal democracy within political parties and the over-centralisation of the decision-making power in the party leadership. This is not a feature unique to the INC— the compulsion to toe the party line leads many MPs to prioritise the interests of their party over the interests of their constituency, which may, as in the case of Telangana, be in conflict with the policy adopted by the party. As a result, an MP's role as an individual parliamentarian, who represents the interests of his constituency, gets diluted in the larger scheme of parliamentary decision-making.

Recognising this, the Second Administrative Reforms Commission in its Report on "Ethics in Governance"¹⁸⁷ highlighted the adverse effects of over-centralisation, by stating that:

"1.9.The more remotely power is exercised from the people, the greater is the distance between authority and accountability. The large number of functionaries between the citizen and final decision-makers makes accountability diffused and the temptation to abuse authority strong. For a large democracy, India probably has the smallest number of final decision makers...."

To counter these effects, the Law Commission of India, in its 170th Report on "Reform of the Electoral Laws",¹⁸⁸ emphasised the need for internal democracy with political parties, by observing that:

"3.1.2.1.if democracy and accountability constitute the core of our constitutional system, the same concepts must also apply to and bind the political parties which are integral to parliamentary democracy. It is the political parties that form the government, man the Parliament and run the governance of the country. It is therefore, necessary to introduce internal democracy, financial transparency and accountability in the working of the political parties. A political party which does not respect democratic principles in its internal working cannot be expected to respect those principles in the governance of the country. It cannot be dictatorship internally and democratic in its functioning outside..."

¹⁸⁷ 4th Report, Second Administrative Reforms Commission (2007) ("ARC Report"), available at <<http://arc.gov.in/4threport.pdf>>, accessed on 13th April, 2016.

¹⁸⁸ "Reform of the Electoral Laws", Law Commission of India (1999), available at <<http://www.lawcommissionofindia.nic.in/lc170.htm>>, accessed on 13th April, 2016.

In its 255th Report on “Electoral Reforms”, the Law Commission of India reiterated the recommendation for greater internal democracy within political parties for improved governance in India.¹⁸⁹ However, in spite of these proposals, no action appears to have been taken by the Parliament, thus far, to engage with members, and institutionalise internal democracy, within political parties. As a result, the expulsion of members, for any reason whatsoever (which may be termed as an anti-party activity), appears to remain a common method for ensuring unanimity of opinion within political parties.¹⁹⁰ This is a cause for concern as it poses a serious threat to the constitutional rights of an MP under Article 105 of the Constitution. Furthermore, it both incentivises and accentuates disruptions. For individual MPs, disruptions become a method to make their presence felt, given that in legislative activity it is imperative for the MP to toe the party line. At the same time, when the party takes a considered stance to disrupt the House, as has happened with both major opposition parties in the two Sessions studied, disruptions are accentuated since MPs are bound to toe the party line. In order to remedy these ill-effects, there is need for greater clarity on the manner in which the power to expel an MP for anti-party activities can be exercised.

B. DEFECTION

Likewise, the anti-defection law is the strongest testament to the privileging of party over individual in Parliament. It is based on the premise that MPs who vote contrary to the party line are presumed

¹⁸⁹ Report No.255 on “Electoral Reforms”, Law Commission of India (2015), available at <<http://lawcommissionofindia.nic.in/reports/Report255.pdf>>, accessed on 13th April, 2016; See also, Ruchika Singh, “Intra-party Democracy and Indian Political Parties”, Policy Report No. 7, Hindu Centre for Politics and Public Policy, available at <http://www.thehinducentre.com/multimedia/archive/02317/Intra_Party_Democr_2317144a.pdf>, accessed on 13th April, 2016.

¹⁹⁰ PTI, “Samajwadi Party suspends MLA, expels other leaders for 'anti-party' activities” (*The Economic Times*, 28th December, 2015), available at <http://articles.economictimes.indiatimes.com/2015-12-28/news/69356608_1_anti-party-activities-samajwadi-party-party-mla>, accessed on 13th April, 2016; Archis Mohan, “BJP suspends Kirti Azad for 'anti-party' activities” (*The Business Standard*, 24th December, 2015), available at <http://www.business-standard.com/article/politics/bjp-suspends-kirti-azad-for-anti-party-activities-115122301046_1.html>, accessed on 13th April, 2016; PTI, “AAP suspends two of its MPs for anti-party activities” (*India Today*, 29th August, 2015), available at <<http://indiatoday.intoday.in/story/aap-suspends-mps-dharamavira-gandhi-harinder-singhkhalsa/1/461845.html>>, accessed on 13th April, 2016; PTI, “Assam Congress to expel 9 MLAs for 'anti-party' activities” (*The Times of India*, 4th October, 2015), available at <<http://timesofindia.indiatimes.com/india/Assam-Congress-to-expel-9-MLAs-for-anti-party-activities/articleshow/49217774.cms>>, accessed on 13th April, 2016; Sandeep Phukan, “Congress Suspends 4 Lawmakers for Anti-Party Activities in Assam” (*NDTV India*, 31st August, 2015), available at <<http://www.ndtv.com/india-news/congress-suspends-4-lawmakers-for-anti-party-activities-in-assam-1212644>>, accessed on 13th April, 2016; Dipankar Ghose, “AAP expels Prashant Bhushan, Yogendra Yadav, 2 others for 'anti-party' activities” (*The Indian Express*, 21st April, 2015), access at <<http://indianexpress.com/article/india/politics/aam-aadmi-party-expels-yogendra-yadav-prashant-bhushan-and-2-others-for-anti-party-activities/>>, accessed on 13th April, 2016; Staff Reporter, “AIADMK functionary expelled for anti-party activities” (*The Hindu*, 24th October, 2015), available at <<http://www.thehindu.com/news/national/tamil-nadu/aiadm-k-functionary-expelled-for-antiparty-activities/article7798738.ece>>, accessed on 13th April, 2016.

to have defected and are consequently liable to be disqualified. As mentioned in paragraph 2(1) of the Tenth Schedule to the Indian Constitution, a member of Parliament, or of the State Legislature, belonging to a particular political party, is liable for disqualification as an MP on the basis of defection, if he: (i) voluntarily gives up his membership of such political party; or (ii) votes or abstains from voting in the House contrary to any direction issued by the political party to which he belongs, or by any person or authority authorised by a political party in this behalf, without obtaining, in either case, the prior permission of such party, person or authority.

Specifically, an MP, who is elected for his allegiance to a particular political party and its associated ideology, votes against directions of the leaders of the party he represents, he is liable to be disqualified from his elected position in Parliament due to his presumptive betrayal of the electorate.¹⁹¹ As a result, an MP is required to adhere to the pre-determined instructions of his party leaders in all matters involving a vote or take prior permission not to. Since the prospect of taking such permission might itself be considered anti-party given the vague contours of the term, in practice there exists little room for the MP to either cast a dissenting vote, or have a different perspective on the matter placed under a vote.

Enacted to fulfil the larger goal of bringing stability to the structure and functioning of political parties and parliamentary proceedings, the anti-defection law was never intended to undermine the role of individual MPs in shaping political discourse.¹⁹² The foundational rationales for the anti-defection law and how they have materialised are beyond the remit of this Report.¹⁹³

However, the visibly broad provisions of the Tenth Schedule have now made it almost impossible for an MP to rely on his own personal judgment while forming an opinion on a matter of public interest. Despite being limited to the voting pattern of an MP, the provisions of the Tenth Schedule have a deep impact on the psyche of an MP, conditioning him to privilege the opinion of his political party over his own.¹⁹⁴ Accordingly, the effect of the law does not remain limited to the voting pattern of

¹⁹¹ Arvind P. Datar, *Commentary on the Constitution of India*, Vol. 2 (2nd edition, LexisNexis Butterworths Wadhwa, 2010), p. 2253.

¹⁹² *Kihoto Hollohon v. Zachillhu and Ors*, (1992) 1 SCC 309.

¹⁹³ Dr. Subhash C. Kashyap (n 184), pg. 1-17.

¹⁹⁴ GC Malhotra, 'Anti-Defection Law in India and the Commonwealth', Lok Sabha Secretariat, 2005; "The Anti-Defection Law - Intent and Impact", Background Note for the Conference on Effective Legislatures, PRS Legislative Research (2009), available at <http://www.prsindia.org/administrator/uploads/general/1370583077_Anti-Defection%20Law.pdf>, accessed on 13th April, 2016; V. Venkatesan, "Loopholes in the anti-defection law" (*Frontline*, Vol. 14, No. 23, 15th to 28th November, 1997), available at <<http://www.frontline.in/static/html/fl1423/14230160.htm>>, accessed on 13th April, 2016; Barun Mitra, "A law endangering democracy" (*LiveMint*, 21st August, 2008), available at <<http://www.livemint.com/Opinion/7ixDFllqfTwkR5tyL0cDjN/A-law-endangering-democracy.html>>, accessed on 13th April, 2016; Anita Joshua, "Congress MP moves Bill to amend anti-defection law" (*The Hindu*, 10th February, 2010), available at <<http://www.thehindu.com/news/states/congress-mp-moves-bill-to-amend>>

an MP, but rather extends to his ability to express his opinion, in general. This overwhelms certain MPs, pushing them into expressing their opinions, including the interests of their individual constituencies, by way of disruptions.¹⁹⁵

The compulsion to follow the party line, regardless of whether there is a motion to vote, manifests itself in various forms, one such form being through parliamentary disruptions. For instance, as mentioned previously, an MP, who does not engage in disruptions himself but witnesses the disorderly conduct of the other members of his party, including the party's leaders, may be forced to put up with such disruptions, while trying to follow the party line. The futility of the Lok Sabha and the Rajya Sabha Rules on the suspension of MPs by means of a vote on the floor of the House, coupled with the introduction and evidently increased usage of the rule of automatic suspension of an MP (which is, presently, only available to the Speaker of the Lok Sabha), corroborates this premise.¹⁹⁶

Besides, an MP may also be provoked to engage in disorderly conduct herself, so as to express her own views. This would explain the absolute lack of decorum during the Zero Hour and the Question Hour, as is evident from the information in the Annexure to this Report. It would also explain the disproportionate use of parliamentary disruptions by mainly those MPs, who are representatives of a political party, and are not independent members of the House.¹⁹⁷

antidefection-law/article103984.ece>, accessed on 13th April, 2016; V. Eshwar Anand, "Defections: Need to revisit the Act" (*The Tribune*, 9th November 2010), available at <<http://www.tribuneindia.com/2010/20101110/edit.htm#6>>, accessed on 13th April, 2016; Yogendra Yadav, "The paradox of political representation", available at <http://www.india-seminar.com/2008/586/586_yogendra_yadav.htm>, accessed on 13th April, 2016.

¹⁹⁵ V. Kumara Swamy (n 37); Milind Ghatwai, "Madhya Pradesh: Congress leader expelled for targeting Rahul and Sonia Gandhi" (*The Indian Express*, 15th October, 2014), available at <<http://indianexpress.com/article/india/politics/madhya-pradesh-congress-leader-expelled-for-targeting-rahul-and-sonia-gandhi/>>, accessed on 13th April, 2016; Smita Gupta, "Mamata has her way, Trivedi to quit" (*The Hindu*, 19th March, 2012), available at <<http://www.thehindu.com/news/national/mamata-has-her-way-trivedi-to-quit/article3009524.ece>>, accessed on 13th April, 2016; Dipak Mishra, "HC relief for JDU rebels" (*The Telegraph*, 7th January, 2015), available at <http://www.telegraphindia.com/1150107/jsp/frontpage/story_7172.jsp#.VulCr7R96M9>, accessed on 13th April, 2016.

¹⁹⁶ First Report of the Rules Committee, Thirteenth Lok Sabha (2001), available at <http://164.100.47.134/lssccommittee/Rules%20Committee/13_Rules%20Committee_1.pdf>, accessed on 13th April, 2016; During the proceedings in RS II, for example, 30 MPs of BJP requested the Chairman to suspend a number of members from the INC, who were coming into the well of the House and disrupting the proceedings of the House. However, all the members of the INC, who were in majority in RS II, did not let the Chairman act upon this request. Consequently, the INC member, who might have wanted to put an end to parliamentary disruptions and engage in constructive debate within Parliament, may have been compelled to remain quiet and put up with the unruly behaviour of the members of his own party. Please see the Rajya Sabha Session held on 7th August, 2015, available at <<http://164.100.47.5/newdebate/236/07082015/Fullday.pdf>>, accessed on 13th April, 2016.

¹⁹⁷ Please see the analysis in Chapter II; Rule 123 of the Election Symbols (Reservation and Allotment) Order, 1986, on the requirements to be fulfilled in order to be deemed as a candidate affiliated to a political party. Available at

While there are only a few illustrations of the restrictive impact of anti-defection law on the behaviour of MPs,¹⁹⁸ there exist a number of judicial pronouncements and scholarly reports that attempt to draw attention to this impact by clarifying the primary object and purpose of the anti-defection law. In the case of *Kihoto Hollohon v. Zachillhu and Ors.*,¹⁹⁹ the constitutional validity of the Tenth Schedule was challenged on the ground that it violated the freedom of speech and expression. While upholding the validity of the Tenth Schedule, the Supreme Court observed that:

“122. While construing Paragraph 2(1)(b) it cannot be ignored that under the Constitution members of Parliament as well as of the State Legislature enjoy freedom of speech in the House though this freedom is subject to the provisions of the Constitution and the rules and standing orders regulating the Procedure of the House.... The disqualification imposed by Paragraph 2(1)(b) must be so construed as not to unduly impinge on the said freedom of speech of a member. This would be possible if Paragraph 2(1)(b) is confined in its scope by keeping in view the object underlying the amendments contained in the Tenth Schedule, namely, to curb the evil or mischief of political defections motivated by the lure of office or other similar considerations. The said object would be achieved if the disqualification incurred on the ground of voting or abstaining from voting by a member is confined to cases where a change of government is likely to be brought about or is prevented, as the case may be, as a result of such voting or abstinence or when such voting or abstinence is on a matter which was a major policy and programme on which the political party to which the member belongs went to the polls...”

In the recent case of *Gyanendra Kumar Singh v. The Bihar Legislative Assembly*,²⁰⁰ the Patna High Court built upon the observations of the Supreme Court, and observed that:

“As discussed a 'defection' in the present context would mean an 'abandonment' of the party to which the legislator concerned belongs; an act confirming disloyalty to that party; a positive act to join another party; a change in party affiliation/allegiance; an act of floor-crossing, call it by any name. The question is whether the act and conduct of the petitioners is reflective of any such category. There is a very thin line separating an act of 'defection' with an act of 'dissent'.

<http://eci.nic.in/eci_main/ElectoralLaws/OrdersNotifications/Election_Symbol_2011_order_1968.pdf>, accessed on 13th April, 2016.

¹⁹⁸ Ejaz Ali's and H.T. Sangliana's ouster from their respective parties serve examples of the misapplication of anti-defection law in curbing freedom of speech of MPs. Please see V. Kumara Swamy (n 37).

¹⁹⁹ (1992) 1 SCC 309; See also *Mayawati v. Markandeya Chand & Ors.*, AIR 1998 SC 3340; *Rameshwar Prasad and Ors. v. Union of India (UOI) and Anr.*, AIR 2006 SC 980.

²⁰⁰ AIR 2015 Pat 42. No paragraph or page number is available at the moment.

Whereas all cases of defection would be inclusive of acts of dissent either backed by lure for office or for other considerations which strictly may not be called 'moral' but the converse is not always true and all cases of 'dissent' do not necessarily fall within the meaning of the term 'defection'...Our Constitution itself guarantees to its citizens, the liberty of thought, expression, belief, faith and worship. A dissent in context with a people's representative can be for any of these reasons and unless accompanied with a lure for public office or other considerations or the act itself has a reflection of abandonment of loyalty, it would not constitute a 'defection'."

In addition to these judgements, a number of reports of inter-governmental bodies have also recommended specific amendments to the anti-defection law, so as to ensure that it safeguards the freedom of speech and dissent of an MP. For instance, the Dinesh Goswami Committee on Electoral Reforms, constituted in May, 1990, made the first set of recommendations to streamline the procedure under the Tenth Schedule to the Constitution.²⁰¹ On page 60, the Committee noted that:

"1.4.1. Disqualification provisions should be made specifically limited to cases of (a) an elected member voluntarily giving up membership of the political party; and (b) voting or abstention from voting by a member contrary to his party direction or whip only in respect of a motion of vote of confidence or a motion amounting to no-confidence or Money Bill or motion of vote of thanks to the President's address." (emphasis supplied)

In its 170th Report, the Law Commission of India also made recommendations for reading down the provisions under the Tenth Schedule.²⁰² It specifically noted that:

"3.4.6. Desirability of issuing the whip in specific situation only. - So far as the issuance of the whip is concerned, it is not governed by any law. Neither the Rules framed under the Tenth Schedule nor the Rules of Procedure and Conduct of Business in the Lok Sabha/Council of States provide for or regulate the issuance of whip. It appears to be a matter within the discretion and judgment of each political party. In such a situation, we can only point out the desirability aspect and nothing more. It is undoubtedly desirable that whip is issued only when the voting in the House affects the continuance of the government and not on each and every occasion. Such a course would safeguard both the party discipline and the freedom of speech and expression of the members."

²⁰¹ Report of the Dinesh Goswami Committee on Electoral Reforms (1990), available at <<http://lawmin.nic.in/ld/erreports/Dinesh%20Goswami%20Report%20on%20Electoral%20Reforms.pdf>>, accessed on 13th April, 2016.

²⁰² Reform of the Electoral Laws (n 188).

In addition, a member of the INC party and a former MP, Mr. Manish Tewari also introduced a private members' bill titled "The Constitution (Amendment) Bill, 2010" to amend the Tenth Schedule and narrow down the scope of application of the anti-defection law.²⁰³ While the Bill did not garner support in the Lok Sabha, it brought the restrictive impact of the anti-defection law on the freedom of speech of an MP to the forefront of public discourse.²⁰⁴

In view of the discussion above, it is evident that the threat of expulsion for anti-party activities, or for defection, not only cripples an MP from exercising her right to dissent, but it may also, in some instances, prompt the MP to engage in disorderly conduct, either following the party line or in order to be heard. It also allows the perpetuation of such disorderly conduct in successive proceedings in Parliament, in view of the mob mentality that such acts reinforce. This is an over-correction in response to truant MPs and consequently a violation of the constitutional rights and privileges granted to an MP, as an individual and as a parliamentarian.

As a result, it is imperative that certain measures be taken to strengthen the internal democracy in political parties through constructive debate and deliberation on all issues of concern. In this context, as stated before, it may be useful to clarify the meaning and scope of anti-party activities in order to put all MPs on notice of what actions may, or may not, constitute an anti-party activity. It may also be useful to amend the anti-defection law so as to ensure a more harmonious construction with the freedom of speech and expression codified under Part III of the Constitution. Particularly, a better balance needs to be struck between the role of the MP as an individual vis-à-vis his role as a member of a political party; the former cannot be subservient almost entirely to the latter, as is currently the case. The recommendations made within the text of the reports cited above, may serve as a useful starting point for this purpose. These, together with our own recommendations are contained in Chapter VI.

²⁰³ The Constitution (Amendment) Bill, 2010, available at <<http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/411ls.pdf>>, accessed on 13th April, 2016.

²⁰⁴ Anita Joshua (n 194); Vidya Subrahmaniam, "From roaring lion to timid mouse" (*The Hindu*, 26th February, 2010), available at <<http://www.thehindu.com/todays-paper/tp-opinion/from-roaring-lion-to-timid-mouse/article718536.ece>>, accessed on 13th April, 2016.

VI. RECOMMENDATIONS

The research in **Chapters II, III, IV and V** are testament to a fundamental requirement – certain structural and substantive changes are necessary if Parliament is to function in an efficient manner. While the Lok Sabha and Rajya Sabha Rules contain some guidance on the structure, procedure, and substance of parliamentary proceedings, the rising incidents of parliamentary disruptions necessitate certain specific reform measures that would ensure that each MP gets the opportunity to express her opinion in Parliament, without disrupting it or being affected by such disruptions. Besides, the parliamentary rules on discipline, which appear to be reasonable on paper, are not effective in curbing disruptions in practice. As a result, there seems to be a need for definitive changes in the disciplinary rules of the Lok Sabha and the Rajya Sabha for ensuring greater productivity in parliamentary sessions. In this regard, measures promoting popular accountability may also be useful in deterring some MPs from engaging in disruptions, due to their fear of losing credibility in the public eye. In view of these findings, the following reforms are being proposed:

1. Structural Reforms

- a. Composition of the Rajya Sabha
- b. Application of the law on anti-defection
- c. Inner-party democracy
- d. Discussions led by parties in opposition
- e. Prime Minister's Questions

2. Substantive Reforms

- a. Permission to intervene, and the expression of a divergent view
- b. Disrupting members to be named by the Speaker
- c. Ethics Committee Reforms
 - i. Preparation of reports on disruptions
 - ii. Periodic Review of the Ethics Committee
- d. Reduction of salary for suspended members

3. Measures for Popular Accountability

- a. Stopping live telecast when disruptions become excessive
- b. Parliamentary disruptions index

A. STRUCTURAL REFORMS

1. Composition of the Rajya Sabha

A startling finding from the functioning of the parliamentary sessions studied was the high incidence of disruptions in the Rajya Sabha. This is attributable to a mismatch between the power of the Rajya

Sabha in being able to check and balance government, and its composition, which is entirely political and delinked from federal interests. As the check and balance function is a significant one, structural reforms are necessary to ensure that such checks are exercised for the right reasons and in a parliamentary manner. In order to do so, there are two key structural changes necessary. First, of the MPs who are elected by members of state legislatures, there ought to be a limitation that at least one-half of them must be persons of eminence, not belonging to any political party. This quota of eminent non-political MPs elected by state legislators can operate uniformly across the country. This will strike a careful balance— capable legislators belonging to political parties will be elected, as will men and women of eminence from outside the political sphere. A simple proviso to this effect must be introduced in Article 80 of the Constitution, in order to effectuate this change.

Second, the Rajya Sabha must be restored to its original function of espousing state interests at the federal level. This can be effectively done if the residency requirements of MPs, who are elected, are strengthened such that persons are elected from states where they currently reside, or at least have resided in for a period of five years prior to their election. This will create greater accountability of the MP to raise state-specific concerns and increase chances that she will actually do so given that she has nexus with the state she represents. In fact, this was a requirement prior to the amendment to Section 3 of the Representation of the People Act, 1951 (“RP Act”) in 2003. The increase in disruptions has meant that it is imperative that the original position be restored. Thus, Section 3 of the RP Act ought to be amended to require residence in the State or territory from which the MP is a candidate to the Rajya Sabha.

2. Application of the law on anti-defection

It is evident from the law relating to defection, that it strikes a poor balance between the need for party discipline and the parliamentary privilege of free speech of an MP, unambiguously privileging the former over the latter. There are good reasons to ensure that persons continue to represent parties they were members of at the time of their election and not be subverted by fair means or foul play to other parties. At the same time such a restriction should not ordinarily apply to behaviour in Parliament, unless it deals with particular kinds of voting that are crucial to the survival of the government. This is especially so since a parliamentary whip can now be issued on any vote or matter pertaining to the stance taken by a party in Parliament. Thus, the application of the law of defection by convention should only be when a MP votes against the party whip on a no-confidence motion or a finance bill. For ordinary legislative activity as well as non-legislative activity (where whips are issued), a contrary vote should not attract the anti-defection law. This parliamentary convention will ensure that in general legislative activity, a conscience vote is the norm and the individual is privileged over the party, whereas in votes where the survival of the government itself is at stake, the reverse is true.

3. Inner Party Democracy

Despite several authoritative commissions recommending greater inner-party democracy, little has materialised in this regard. That political parties, which enjoy a great degree of power have relatively minimal accountability norms is well-known. To the extent that parties are free to expel members following their own processes, reform is urgently required. This is especially so since a key element in disruptions having increased is that members of parties, in order to toe the party line, disrupt the house *en masse*. Removing the Damocles' sword of party expulsion in case of not toeing the party line pertaining to disruptions might have a possible effect on preventing *en masse* disruptions. This, however, cannot be achieved through a change of legislation. It will require the institution of a public interest litigation on political party reform in the Supreme Court asking the Court to hold the parties to account for their obligations under various laws, rules, as well as their own constitutions, including incorporating natural justice rules in the process of expulsion of party members.

4. Discussion led by parties in opposition

The parliamentary rules provide the members of the opposition parties with limited means to intervene and lead discussions in Parliament. As a result, and as evident from the analysis in Chapter II, members of the opposition engage in more disruptions than their other counterparts (i.e. independent members, or members of the ruling government) in Parliament. Such disruptions also allow ruling governments to dodge answering questions before Parliament, and not be held accountable for their actions. To address this, the parliamentary sessions may be structured on similar lines as in the UK and USA, where the opposition parties get the opportunity to lead discussions. A provision to this effect must be included in the rules of the Lok Sabha and the Rajya Sabha, wherein when the Parliament is in session, at least one day per week, preferably a Monday (so as to reduce incidents of disruptions during the rest of the week), must be allocated towards discussions that are led by the members of the opposition parties. The apportionment of time towards such discussions must be determined during the allocation of business slated to be transacted at the session in Parliament.

5. Prime Minister's Questions

The Question Hour and Zero Hour in the Indian Parliament serve as forums for MPs to pose questions to the ruling government, and express their opinions against the actions of the ruling government. However, it is commonly observed that the questions and the statements of MPs in these forums have the propensity to invoke disruptions, rather than further debate in Parliament.²⁰⁵ It may also be pointed out that the Prime Minister of India does not appear to be bound by any convention to remain

²⁰⁵ Please refer to the Annexure to this Report.

present during the Question Hour or the Zero Hour. This also aggravates the existing chaos in Parliament, since there is no substitute for the Prime Minister in terms of authority.

As seen in the UK, the Prime Minister is bound by a constitutional convention to respond to questions directly posed to him by MPs. By way of this device, MPs get the opportunity to engage in constructive dialogue with the Prime Minister at a dedicated time, on a weekly basis. This results in lesser disruptions, and a more spirited debate in Parliament. Taking inspiration from the UK convention, it is recommended that a device for posing questions to the Prime Minister be included within the Lok Sabha and Rajya Sabha rules for ensuring greater engagement between the Prime Minister and the MPs. Questions to the Prime Minister must be allowed to be posed at least once every week while Parliament is in session with the Prime Minister by convention being present and answering such questions.

B. SUBSTANTIVE REFORMS

1. Permission to intervene, and the expression of a divergent view

While the Lok Sabha and Rajya Sabha Rules provide comprehensive guidance on parliamentary etiquette, they do not regulate parliamentary interruptions *per se*, which are an acceptable form of intervention during parliamentary deliberations. This is worrisome, as MPs are not supplied with any guidance on the exact methods of intervention that are permissible in Parliament that do not involve disruptions. Furthermore, the terms ‘interruption’ and ‘disruption’, which are often used in the documents supplied by the Lok Sabha and the Rajya Sabha Secretariat, have not been defined under the Lok Sabha and the Rajya Sabha Rules. As a result, it is impossible for MPs to distinguish between the kinds of interventions that are acceptable, and that are not. Besides, as noted in Chapter II, MPs are unable to present their individual views in Parliament, which are contrary to the views of the party they represent.

To counter these issues, three key measures are recommended. First, the Lok Sabha and Rajya Sabha Rules must provide for a distinction between a ‘disruption’ and an ‘interruption’, perhaps on the basis of the definition presented in Chapter II. Second, an express provision on the permissible methods of intervention during parliamentary debates must be incorporated into the parliamentary rules for providing MPs with greater clarity on the intervention devices available to them. For example, the procedure of the German Parliament allows MPs to intervene during debates and pose questions to the person speaking, with the permission of such person and for a limited period of time. Third, to counter some of the issues highlighted in Chapter II, it is recommended that the Lok Sabha and Rajya Sabha Rules incorporate an express provision which permits MPs to express views which are divergent from the views of her party. This may be effectuated on similar lines as in the German Parliament, where MPs, who wish to present their divergent views from those of the party they represent, are given a specific opportunity to express themselves.

2. Disrupting members to be named by the Speaker

The disciplinary tool used most frequently by the Speaker to curb disruptions in the Indian Parliament is the practice of verbally reprimanding (on some occasions naming) MPs during debates, and requesting them to stop engaging in disruptions. However, the use of this practice has had little impact in deterring MPs from continuing to indulge in disruptive behaviour. In contrast, the comparative analysis of jurisdictions in Chapter III, demonstrates that the naming of MPs in the Parliament of other countries tends to dissuade them from disrupting the House. This is because the possibility of being publicly shamed by the Speaker for un-parliamentary behaviour, serves as an adequate deterrent for MPs to maintain decorum in the House. Taking inspiration from these measures in other countries, it is recommended that the powers of the Speaker/Chairman within the parliamentary rules be amended to include an express provision which allows the Speaker/Chairman to name the MPs who engage in parliamentary disruptions, and to make this information available to the general public through the Report of the Ethics Committee, or within the official documents of the Lok Sabha and Rajya Sabha Secretariat. Guidelines must be laid down clearly delineating the details of these powers. For instance, naming of a member more than twice could lead to suspension for the day; naming of a member more than thrice could lead to suspension from the session for a longer period of time.

3. Ethics Committee Reforms

(a) Preparation of reports on disruptions

It is convention for the Speaker and Chairman of the Lok Sabha and the Rajya Sabha respectively, to give an overview of the session on the day of the closing of the session. Statistics about working hours, bills passed, discussions undertaken and the time lost, are made available not only to MPs, but also to the media via the Lok Sabha and the Rajya Secretariat. However, these numbers shed light on the output of the session only, and not on the chaos within Parliament that leads to such numbers. The names of the disrupting members are also not displayed in any official document that is released by the Lok Sabha Secretariat.

An initial step towards alleviating the problem of disruptions would be to ensure that the problem of reduced productivity is made known to the public in a formal manner. The Ethics Committees may also be vested with the power to specifically publish information on disruptions, including names of MPs who disrupt the most, on a periodic basis as well as a record of complaints and enquiries relating to disruptions. This information must be made public, drawing from practices in the UK and US (where the Ethics Committees publish reports on their working and incidents of malpractice, corruption, misbehaviour etc. of the members of the Houses of Parliament). The names of disrupting members can also be made available to citizens through electronic and/or print media.

(b) Periodic Review of the Ethics Committee

The effectiveness of the Ethics Committee has been questioned before. For instance, in October 2015, a new Ethics Committee was formed in the Lok Sabha and at the time of its formation, there were concerns as to whether this Committee had enough teeth to enforce disciplinary measures and codes of conduct in the Lok Sabha.²⁰⁶ Further, the Rajya Sabha Ethics Committee, which is supposed to periodically revise the code of conduct for parliamentarians under the Rajya Sabha Rules, has not done so in the longest time.²⁰⁷ In fact, the rules of procedure and code of conduct of the Rajya Sabha and Lok Sabha are outdated and in urgent need of review, particularly with regard to issues of disruptions, and discipline within Parliament. Consequently, it is recommended that the powers of the Ethics Committees in the Lok Sabha and the Rajya Sabha be subjected to periodic review (which may either be through self-review, or through a review by another committee), in line with the practices of review in other jurisdictions as mentioned in Chapter III.

4. Reduction of salary for suspended members

Overall, it can be inferred that one of the reasons for excessive and repeated disobeying of the Speaker/Chairman's orders in Parliament is the lack of effective deterrents for MPs. The parliamentary framework of a number of jurisdictions contains provision(s) for reducing the salary of MPs for the number of days that such MP is suspended.²⁰⁸ While there have been attempts to deal with disruptions in Parliament by means of Private Member's Bills, such Bills have, unfortunately, not been translated into legislation.²⁰⁹ It is therefore recommended that there must be a re-examination of these Bills, so that they are brought into force. Alternatively, provision to reduce salaries of MPs who are suspended (for, among other things, disruptions) may be incorporated in the Lok Sabha and the Rajya Sabha Rules. The disciplinary powers of the Speaker/Chairman may be specifically amended within the rules, after a detailed examination by the Ethics Committee of the impact that may be brought about by a provision of this nature. Though the effect of this amendment may not

²⁰⁶ See Bhanupriya Rao, 'Lok Sabha has a new standing committee on Ethics. But does it have enough teeth?' (*Factly*, 15th October, 2015) available at <<https://factly.in/parliamentary-ethics-committee-india-lok-sabha-has-new-standing-committee-on-ethics-but-does-it-have-enough-teeth/>>, accessed on 13th April, 2016.

²⁰⁷ Rule 290 enlists the functions of the Committee; and Rule 290(b) states that one of the functions is "to prepare a Code of Conduct for members and to suggest amendments or additions to the Code from time to time in the form of reports to the Council".

²⁰⁸ Refer to Chapter III of this Report on Comparative Analysis.

²⁰⁹ For instance, the Disruption of Proceedings of Parliament (Disentitlement of Allowances) Bill, 2004, available at <http://164.100.24.219/BillsTexts/RSBillTexts/AsIntroduced/XXXIX_2004.PDF>, accessed on 13th April, 2016; The Disruption of Proceedings of Parliament (Disentitlement of Daily Allowance to Members and Termination of Membership) Bill, 2008, available at <<http://164.100.24.219/BillsTexts/LSBillTexts/asintroduced/158ls-4.pdf>>, accessed on 13th April, 2016; The Disruption of Proceedings of Parliament (Disentitlement of Daily Allowance to Members and Termination of Membership) Bill, 2009, available at <<http://164.100.24.219/BillsTexts/LSBillTexts/asintroduced/2682ls-15.pdf>>, accessed on 13th April, 2016.

immediately be felt, for the Speaker to possess that option is necessary as an end in itself in order to effectively manage parliamentary proceedings.

C. MEASURES FOR POPULAR ACCOUNTABILITY

1. Discontinuing live telecast when disruptions become excessive

One of the reasons for disruptions becoming a norm in the Indian Parliament, is the grandstanding by MPs for live coverage in the media.²¹⁰ The presence of an audience seems to have considerable impact on the behaviour of MPs, motivating them to engage in disruptions of the most grievous kind.²¹¹ MPs also resort to disruptions as they find it to be the most convenient of all methods to stay relevant in the public eye. To counter this trend, it is recommended that the live telecast of parliamentary debates be stopped when disruptions become excessive. While the Speaker, in some instances of disruptions, endeavours to remove disruptions from the corrected and un-corrected text of the debates by directing the scribe to not put it on record, the stopping of the live feed would be its electronic analogue, and a more effective method to curb disruptions.

2. Parliamentary Disruptions Index

At the outset, it is essential to understand that not all disruptions in the Parliament are necessarily counter-productive. In fact, important issues are often brought to light on the floor of the House when members interrupt the proceedings to raise these issues. At the very beginning of this Report, an attempt has been made to draw a distinction between genuine interruptions which raise issues of national importance and seek to engage members, from different political parties, in a healthy debate, from disruptions, which are made simply to stall the smooth and efficient functioning of the House(s). The latter, for instance, usually ends in parliamentary logjams- as was seen in one of the Sessions studied where the GST Bill was tabled (the debate on which could not even be started on the floor of the Rajya Sabha due to incessant disruptions).

The first step towards reducing disruptions would be to quantify the extent of disruptions, both in terms of the total productive time lost in a session as well as the contribution of an individual MP to the loss of such time through disruptions. For this purpose, it is recommended that a “Parliamentary Disruptions Index” (PDI) be formulated which would measure the number of disruptions caused by an

²¹¹ It is corroborated by official statistics that the proportion of time lost to disruption has been increasing. The loss of time, just below 10% during the 10th Lok Sabha (1991-1996), reached a record high of 40% during the 15th Lok Sabha (2009-2014). Interestingly, this period corresponds to the significant increase in penetration of mass media in society (including direct coverage of parliamentary proceedings on TV) and the passage of anti-defection law. See Pandey, 'The politics of parliamentary disruption' (*Live Mint (Opinion)*, 24th August 2015), available at <<http://www.livemint.com/Opinion/Vf3anAosbfd9A6TJJiYFHL/The-politics-of-parliamentary-disruption.html>>, accessed on 13th April, 2016.

individual MP and would also tabulate the time lost to such disruptions. Through the PDI, the track record of an MP who engages in disruptions may be calculated, which would then be useful in shedding light on the member's propensity to engage in such conduct, and her motivations for such conduct. The PDI could also serve as an important method in reducing disruptions through the practice of "naming and shaming" of individual MPs, which would deter such MPs from disrupting parliamentary proceedings. To operationalise this, the names of MPs who are accorded the highest values under PDI could be shared by media houses as a weekly feature on parliamentary disruptions. The wide dissemination of the names of MPs could adversely impact their public image and could, possibly, restrain them from engaging in further disruptions. The methodology for calculating the PDI will be released separately by Vidhi.

3. Productivity Meter

In addition to PDI, the overall productivity of the session also ought to be studied and disseminated to the public on a weekly basis. For this, a "Productivity Meter" could be created which would take into consideration the number of hours that were wasted on disruptions and adjournments, and monitor the productivity of the day-to-day working of both Houses of Parliament. The methodology for calculating the Productivity Meter will be released along with the PDI.

By incorporating structural and substantive measures as well as measures for popular accountability, reduction of parliamentary disruptions may be possible. While the structural and substantive measures would alleviate the problems with the organisation of a parliamentary session itself, measures for popular accountability might discourage individual MPs from engaging in disruptions. However, ultimately for parliamentary disruptions to be weeded out of public life in India, there needs to be widespread acceptance across party lines and the citizenry that disruptions are unacceptable in a democratic setup. Without such recognition, Parliament will scarcely remain a forum for effective debate and deliberation on matters that affect the lives of people in India.



Vidhi

Centre For Legal Policy

BETTER LAWS. BETTER GOVERNANCE

Please direct all correspondence to:
Yashaswini Mittal,
Vidhi Centre for Legal Policy,
D-359, Defence Colony,
New Delhi – 110024.
Phone: 011-43102767/ 43831699
Email:
yashaswini.mittal@vidhilegalpolicy.in