

INDIAN LAW-MAKING PROCESS: A CRITICAL ANALYSIS

Dr. Kiran V. Ainenwar

Assistant Professor, Political Science

S.V.M. Art's College, kinwat

Abstract

The method by which laws are enacted in India is an essential component of the democratic governance and constitutional framework that the country possesses. The process, which has its origins in the parliamentary system that was inherited from the British model, is intended to guarantee that the formation of legislation is accompanied by discussion, representation, and accountability. In this study, a critical examination of the Indian law-making process is presented. The study investigates the procedural processes, institutional functions, and efficacy of the law-making process in addressing the complex socio-political realities of a varied nation. In practice, the process is frequently criticised for being opaque, unduly affected by party politics, and missing genuine public involvement. This is despite the fact that the theoretical structure assures checks and balances through bicameral parliamentary inquiry, presidential assent, and judicial review. In this article, we investigate the most important steps of the legislative process, beginning with the submission of a bill and ending with its enactment. We also emphasise concerns such as hasty legislation, restricted debates, the underutilisation of parliamentary committees, and the emergence of ordinance-making as a means of bypassing the executive branch. Additionally, it discusses the influence that political majoritarianism and lobbying have on the process of lawmaking. The research, which makes use of current legislative case studies, shows systemic weaknesses and proposes solutions to improve democratic accountability, democratic transparency, and democratic participatory participation. In the end, the study highlights the necessity of a legislative process that is more inclusive, transparent, and robust in order to sustain the spirit of constitutional democracy in India.

Keywords: Indian, law, making, critical

Introduction

India's constitutional democracy is based on the law-making process, which serves as the primary mechanism through which the will of the people is transformed into legally enforceable norms of government. This process is at the core of India's constitutional democracy. Parliament, which is located at the federal level, and state legislatures, which are located at the regional level, are the primary entities responsible for carrying out the legislative process. This procedure follows the requirements of the Constitution. This role includes discussing, scrutinising, and adopting laws that are reflective of the socio-economic, political, and cultural realities of the country. These entities have been entrusted with the obligation of doing so. At the level of the Union, India has a bicameral parliamentary system, which is comprised of the Lok Sabha (House of the People) and the Rajya Sabha (Council of States). Both of these bodies are extremely important in the process of lawmaking. There is a predetermined procedure that is outlined in the Constitution for the presentation, discussion, amendment, and passing of legislation. In order for a bill to become law, it must first get the consent of the President. Through the implementation

of this procedural framework, the executive branch, the legislative, and the judiciary will be able to maintain openness, accountability, and a system of checks and balances. Nevertheless, in actuality, the process of lawmaking in India has been subjected to criticism for being increasingly affected by partisan politics, executive overreach, and a lack of real discussion. This raises severe questions about the quality of legislation as well as its democratic validity. The fast passing of bills, scant debates in both Houses, and the rising dependence on ordinances to circumvent legislative debate are all factors that contribute to these issues. Furthermore, the deliberative nature of the Indian legislative process has been further damaged by the diminishing function of standing and select committees, which are intended to conduct in-depth examinations of laws. In addition, despite the existence of constitutional protections and democratic principles that encourage citizen engagement, the level of public participation in the process of lawmaking continues to be somewhat restricted. The absence of procedures for prolonged consultation with civil society, experts, and stakeholders frequently results in the enactment of laws that are out of touch with the reality of the ground. This, in turn, leads to legal challenges, demonstrations, and requests for reconsideration or repeal of the laws. In this context, it is vital to conduct a critical study of the process by which laws are made in India. This analysis should not only evaluate the legal and procedural components of the process, but also evaluate its efficiency, inclusiveness, and conformity with democratic values. This research is to examine the strengths and flaws of the current legal framework, investigate recent trends and case studies, and recommend reforms that might assist in restoring the spirit of deliberation and participation that is characteristic of Indian democracy. By acting in this manner, it intends to make a contribution to the larger conversation that is taking place in India around legislative governance, transparency, and institutional accountability.

Constitutional Framework and Parliamentary Ideals

According to Granville Austin (1999), the Indian Constitution is a formal instrument that is dedicated to the principles of justice, liberty, equality, and fraternity, with a particular emphasis on parliamentary democracy. As far as he is concerned, the legislative process was supposed to be open to public scrutiny, open to discussion, and open to participation. In a similar vein, D.D. Basu (2013) provides an overview of the procedural protections that are included into the Indian parliamentary system. These safeguards include numerous readings of legislation, inspection by committees, and checks through bicameralism and presidential assent.

Legislative Efficiency vs. Democratic Deliberation

The authors Arun Shourie (2006) and Subhash Kashyap (2010) contend that throughout the course of time, the quality of discussions, the number of sitting days, and the level of seriousness with which measures are scrutinised have all decreased in the House of Representatives Parliament. Concerns regarding superficial parliamentary participation are raised as a result of the increasing frequency with which bills are enacted without discussion or by voice votes. In spite of the fact that the Indian legislature is vested with the authority to enact laws on a diverse array of topics, M. V. Pylee (2009) observes that the executive branch has been increasingly in control of the legislative process as a result of political majoritarianism and party discipline.

Role of Parliamentary Committees

The utilisation of department-related standing committees, also known as DRSCs, is considered to be one of the most important pillars of legislative oversight in India. In comparison to the over sixty percent of legislation that were referred to committees in the 1990s, the PRS Legislative Research (2021) found that only about twenty-five percent of the measures that were submitted in recent years were referred to committees. These committees are essential, according to academics such as R. B. Jain (2002), since they allow for the comprehensive study of legislative ideas, as well as the incorporation of the inputs of experts and the opinions of the general public into the process. The underutilisation of these resources undermines both the accountability of legislators and the coherence of policy.

Ordinance-Making Power and Executive Overreach

One of the most significant areas of concern that has been brought to light by academics such as Shubhankar Dam (2014) is the use of ordinances in accordance with Article 123 of the Constitution. This provision grants the President the authority to promulgate laws even while Parliament is not in session. Ordinances, which were first intended to be used in times of emergency, have evolved into a tool that may be used to avoid legislative scrutiny. Despite the fact that the Supreme Court of the United States, in the case of *DC Wadhwa v. State of Bihar* (1987), deemed the repeated employment of ordinances to be unconstitutional, this pattern continues to be prevalent in contemporary administration.

Case Studies and Recent Legislative Trends

The recent legislative developments that have garnered critical attention include the enactment of the Farm Laws (2020), the Citizenship Amendment Act (2019), and the Unlawful Activities (Prevention) Amendment Act (2019). These legislative developments have garnered attention due to the rapidity with which they were passed, the minimal consultation with stakeholders, and the absence of committee scrutiny. These examples, according to the arguments of academics such as Gautam Bhatia (2020), call attention to the increasing concentration of legislative authority and the diminishing influence of deliberative democracy.

Citizen Participation and Legal Literacy

Despite the fact that the Indian Constitution supports public engagement in government, there are still significant gaps in the institutions that allow citizens to meaningfully participate in the process of lawmaking. Both Nivedita Menon (2012) and Jean Drèze (2013) have pointed out that there is a low level of legal literacy, and that there are few institutional paths that allow ordinary individuals or members of civil society to contribute to the process of draughting and evaluating government law. After the law is passed, this frequently leads to opposition from the general public or legal challenges.

Mechanism of Law-making

The purpose of the laws that are enacted in a welfare state is to establish an ordered society, to alleviate the suffering of the general populace to the greatest extent feasible, to control social, political, and economic problems, and to make the path to obtaining justice more straightforward. A complete understanding of the subject matter of legislation, a command of language, an accurate and exact vision of the goals that are wanted to be incorporated in the law, and the ability to communicate those objects in terms that are free of ambiguity are all necessary components for the formulation of a legislative proposal. The process of

draughting legislation requires the participation and consensus of both professionals and laypeople. The individuals who are involved in the process of starting and draughting laws are required to possess a high level of expertise in order to adequately frame legislation. To ensure that the proposed law is conducive to the advancement of society, is free from any tyrannical bias, is easily understandable by men of ordinary intelligence, and does not have any loose ends or loopholes for mischief, it is also necessary for legislators to possess the vision and the capacity to go beyond the written words. For this reason, it is essential that legislators possess acumen.

Bill Format

When a bill is introduced, it must begin with a short title, a long title, the preamble, and an enacting formula, depending on the circumstances. It also states the extent to which it is applicable, as well as the date, under certain circumstances, on which it will become officially effective. In the event that a date is not specified, it indicates that the provision of the Bill will enter into force in line with the provision of section 5 of the General Clauses Act, 1897, which is to say on the date that it obtains the assent. It is possible that the Bill would provide that the legislation will become effective on a date that may be designated by the government through a notification published in the Official Gazette. This may be the case in certain circumstances. A 'Definition clause' is included in certain bills with the purpose of preventing ambiguities and repetitive phrases that are boring to read. Additionally, the bills include the operative part or sections, exceptions and exemptions, procedural provisions, the overriding effect of the Act and regulations, criminal clauses, the capacity to transfer responsibilities, the resolution of doubts, the power to give directions, and saving clauses.

A bill is broken up into self-contained paragraphs that are referred to as clauses. Each clause expresses a particular aspect of the ideas that are included in the bill. It is possible to break a clause down into sub-clauses, and another sub-clause can be broken down even more into parts. The subclauses are numbered (1), (2), (3), etc., and the parts are numbered (i), (ii), (iii), etc. or (a), (b), (c), etc. The clauses are numbered in a sequential order, beginning with 1, 2, 3, etc. Schedules may also be included in a bill if it is deemed essential. Generally speaking, issues of detail, such as lists, tables, and other such things, are attached to schedules. In the event that a bill is lengthy, it is broken up into chapters. A concise heading is assigned to each chapter, phrase, and schedule in the document. In addition to having more than 25 clauses, a bill that incorporates new proposals, concepts, or policies also includes a list of clauses in the form of a "Arrangement of Clauses," which is considered to be part of the essence of the contents of the bill. There are certain bills that include 'Notes on Clauses' that come after the 'Statement of Objects and Reasons' and explain the purpose of each provision in the bill. In addition, the modifying bills include, in the form of an annexure, excerpts from pertinent parts of the Constitution or the primary Act, depending on the circumstances. The formula for passing a bill in India is "Be it enacted by Parliament in the Year of the Republic of India." This is the formula that is used. This indicates that the laws that govern the nation are enacted by Parliament, which is comprised of the President and the two Houses of Parliament working together.

Types of Bills

It is possible for a bill to originate in either House of Parliament, provided that it does not violate any provisions of the Constitution. Because they are sponsored by either a minister or a private member, bills

can be categorised as either government bills or private member bills, depending on the nature of the sponsor. It is possible for the Bill to be one of the following categories, depending on the substance of the bill:

- (a) Bills that are either the originals or bills that incorporate new ideas, concepts, or policies;
- (b) It is possible to alter bills or bills that attempt to change, amend, or rewrite the laws that are currently in place;
- (c) Legislation that seeks to consolidate the current legal framework on a certain topic (also known as "consolidating bills");
- (d) Existing Legislation (Continuance) Bills or Legislation to continue an Act that is about to expire;
- (e) Repealing bills or bills that aim to repeal acts that are already in effect;
- (f) Bills to replace Ordinances; and
- (g) Constitution (Amendment) Bills.

Because of the unique characteristics that they possess, Money Bills on Taxation and Appropriation and Financial Bills are handled differently from other types of bills.

GOVERNMENT BILLS

Initiation of Legislative Proposals

It is either the Cabinet or a Minister of a Ministry that is responsible for initiating legislative ideas for the government. Proposals that include key policies of the government are undertaken in order to put into action the election pledges that the party was brought to power on the basis of. As a consequence of the experience that has been gained from the operation of the laws that are now in place, a Minister or his Ministry may begin proposals that are of a lesser or secondary importance. The concerned Ministry, on the other hand, is responsible for determining the consequences of a legislative proposal as soon as it is conceived of, regardless of whether those implications are political, administrative, financial, economic, or social. The advice of other ministries of the government or state governments is taken into consideration if there is any kind of possibility that they are involved. In cases when it is deemed necessary, the opinion of specialists is also solicited. In conjunction with the Ministry of Law and Justice or the Attorney General of India, the legal or constitutional elements of the matter are investigated and analysed. A self-contained memorandum is written when the proposal has been properly evaluated from all points of view and those who are concerned with it have been contacted. Once the memorandum has been approved by the Ministry of Law and Justice, it is then presented to the Cabinet for approval. Within the context of the proposal, the Cabinet restricts its debate to the broad issues of policy that underpin the proposal, and then it makes its decision. If the proposal is significant, the Cabinet may request that one of its Standing Committees or an ad hoc Committee investigate it in greater detail. Additionally, the Cabinet may stipulate that the draft of the actual Bill should be presented to it for detailed examination after it has given its approval to the principle or policy that underpins the proposal.

Drafting of Bills

The administrative Ministry sends the documents to the Draughtsman in the Ministry of Law and Justice so that they may be draughted into a bill. This happens after the Cabinet has given its approval to the proposal. As a result of the demanding nature of the job, the Draughtsman has to be a specialist in this field who has both training and experience. It is necessary for him to have a comprehensive and in-depth understanding not just of the Indian Statute Book, but also of the machinery, of technical terminology that are utilised in various sectors of government activity, and of the precise meaning surrounding these expressions. He needs to have a comprehensive understanding of the functioning of the government, the decisions made by the judiciary, and the issues that are plaguing the nation. There should be no room for ambiguity whatsoever in the words and phrases that he selects for a particular provision of the Bill; they should express the objective in a clear and concise manner. Not only is he concerned with the structure of the bill and the language that it contains, but he should also make sure that it is straightforward, efficient, and easy to comprehend for individuals of ordinary intelligence. Additionally, the principal officers of the executive Ministry that is concerned with the measure should provide him with assistance and cooperation, make all of the pertinent papers and documents connected with the proposal available to him, and supplement the information through oral discussions with him. This will ensure that the draft Bill is as close to perfect as it can possibly be. A comprehensive review of the Bill in its current form is carried out by the administrative Ministry. It is possible that a bill will need to be draughted many times before it can accept all of the criticism that has been levelled against it and satisfy the numerous specialists who are linked with the topic. Should the Bill be deemed significant, it may also be subjected to a comprehensive examination by the Cabinet or by one of its Committees.

Legislative Process in India

Parliament, which is located at the national level, and Legislative Assemblies and Councils (where appropriate) are located at the state level in India. These are the entities that are responsible for enacting laws. Both the Lok Sabha, also known as the "House of the People," and the Rajya Sabha, often known as the "Council of States," are the two houses that make up Parliament. It is possible to characterise the process of law making in regard to Parliament as the process by which a legislative proposal is placed before it, and then from there it is translated into the law of the land. The pre-legislative phase, the legislative phase, and the post-legislative phase are the three stages or phases that may be generally classified within this overall process. An identification of the need for a new law or an amendment to an existing legislation, the draughting of the proposed law, the solicitation of inputs and comments from various ministries and the general public, the revision of the draft bill to incorporate such inputs, and the vetting of the same by the Law Ministry are all components of the pre-legislative phase. After that, it is brought before the Cabinet for approval or rejection. A Pre-legislative Consultation Policy has been established by the government in order to guarantee an effective pre-legislative examination of a legislative proposal, which will be carried out in consultation with the relevant stakeholders. Included in this are publishing and putting into the public domain:

- the draft legislation or at the very least the information that may include, among other things, a brief justification for such legislation, essential elements of the proposed legislation, its broad financial implications, and an estimated assessment of the impact that such legislation will have on the environment, fundamental rights, lives, and livelihoods of the people who are concerned or affected, etc.

- an explanation note that provides a straightforward explanation of the most important legal elements of the proposed law or rules; a summary of the comments and input that were received from the general public and other stakeholders.

A brief explanation of the input obtained from stakeholders, which may include government departments and the general public, is also expected to be included in the note for the Cabinet along with the draft law. This is in addition to the fact that the responsible department or ministry is obligated to provide the note. When a proposed piece of legislation is brought before Parliament and referred to the Standing Committee, the department or ministry that is responsible for the proposed legislation is also obligated to present a summary of the pre-legislative process to the Department Related Parliamentary Standing Committee. The Bill is presented to the Parliament for consideration once it has been approved by the Cabinet. Notice may be sent by the Minister of the relevant Department upon the submission of the Bill, indicating that the Minister intends for the Bill to be moved, discussed, and ultimately enacted; that it may be referred to the Select Committee of the House or the Joint Committee of both Houses; or that it may be introduced for the purpose of soliciting public opinion. It is necessary to conduct a clause-by-clause review of the bill after it has been taken into consideration. The bill can then be approved, altered, or rejected. After that, the House of Representatives votes on the Bill, taking into account any modifications that may have been proposed. The Bill is then transmitted to the other House of Representatives if it is approved by one of the Houses. The President has the authority to call a joint session of the two houses of parliament, which is presided over by the Speaker of the Lok Sabha, in the event that there is an impasse between the two houses or if more than six months have passed in the other house. However, the President is not required to do so. The deadlock is resolved by a simple majority vote between the two houses. Following the passage of the bill by both houses of the legislature, a copy of the bill is then delivered to the Legislative Department of the Ministry of Law and Justice for thorough examination. After going through the Ministry of Law and Justice's review process, it is then brought to the President for his approval. The President has the authority to enquire about the Bill and request clarification on it. Additionally, the President has the ability to send the Bill back to Parliament for further consideration. 3) The bill is officially announced as an Act after the President has given his assent to it. After that, the Bill is put into effect, and the ministry that is responsible for implementing the Act is responsible for formulating the rules and regulations that will come into effect. The identical documents are then presented to the Parliament.

Challenges in relation to legislative process

There is a common tendency for both individuals who are specialists in the field and those who are practitioners to dispute the method in which policies or legislations are draughted. Several difficulties and gaps in the legislative process have been passed on from generation to generation. The following is an outline of some of them:

Deficit of elements of impact assessment in Manual on Parliamentary Procedures in India (Manual)4 and Pre-legislative Consultation Policy (PLCP)

As previously mentioned, impact assessment (IA) is a component of the law-making process in India as a whole. This involves obtaining public feedback on draft legislation, consulting with pertinent parties, and analysing the financial and social costs and benefits. 5. However, because it is optional and the procedure has created some misunderstandings, it appears that the requirement is frequently disregarded. Although

stakeholder consultations are not required under the Manual on Parliamentary Procedures in India (Manual), they are required by the PLCP. However, the procedure for holding these stakeholder discussions and how all interested groups would need to be represented are not covered in either the Manual or the PLCP. One of the difficulties in evaluating the calibre of public consultation under the laws under discussion was the absence of publicly available information.

Dearth of interconnection between Manual and PLCP

The Manual, which provides a comprehensive explanation of the law-making process in India, is the primary source for determining it. To the extent of the pre-legislative process, the PLCP takes precedence over the Manual, and it is challenging to predict when the Manual's provisions will be interpreted in conjunction with the PLCP's provisions.

Lack of transparency in inviting and accepting Public Comments

The responsible department is required under the Manual and PLCP to solicit public feedback on proposed laws. The relevant department in question is not required by any particular regulations to justify whether or not to adopt any proposals. To guarantee openness and a sense of ownership among the stakeholders about the proposed laws, a process for offering input to them that includes justification is crucial.

Conclusion

A key element of India's democratic system is the legislative process, which aims to express the will of the people through their elected representatives. Transparency, accountability, and participatory government are guaranteed by the system, which is based on constitutional principles and organised parliamentary procedures. A rigorous examination, however, shows that although the theoretical underpinning is still valid, institutional inefficiencies and political biases frequently taint the actual practice of lawmaking. Legislative debate's declining importance, parliamentary committees' underutilisation, laws passing without sufficient review, and the executive branch's growing propensity to create ordinances are some of the main issues. These actions damage public confidence in the democratic process in addition to undermining the calibre of legislation. Furthermore, a significant shortcoming in participatory democracy is shown in the limited participation of individuals, professionals, and civil society in the creation of legislation. The imperative for reform is highlighted by recent legislative tendencies, such as the approval of significant and contentious measures without enough discussion or engagement. The legislative process must serve as an inclusive, deliberative institution that upholds the spirit of the Constitution rather than becoming a pointless formality or an extension of presidential authority. Increasing the number of parliamentary working days, establishing platforms for public consultations, improving legal literacy, encouraging bipartisan dialogue, and institutionalising the mandatory referral of bills to standing or select committees are some of the steps that must be taken to address these issues. The wellbeing of Indian democracy depends on making sure that laws are created both for and with the people. In conclusion, reviving the Indian legislative process necessitates a culture change towards democratic discourse, accountability, and openness in addition to procedural changes. Only then will India's legislative institutions be able to carry out their mandate as protectors of constitutional democracy and engines of inclusive growth.

References

- [1] Austin, G. (1999). *Working a Democratic Constitution: The Indian Experience*. Oxford University Press.
- [2] Basu, D. D. (2013). *Introduction to the Constitution of India* (21st ed.). LexisNexis Butterworths.
- [3] Bhatia, G. (2020). *The Transformative Constitution: A Radical Biography in Nine Acts*. HarperCollins India.
- [4] Dam, S. (2014). *Presidential Legislation in India: The Law and Practice of Ordinances*. Cambridge University Press.
- [5] Drèze, J., & Sen, A. (2013). *An Uncertain Glory: India and Its Contradictions*. Princeton University Press.
- [6] Jain, R. B. (2002). *Contemporary Issues in Indian Administration*. Deep & Deep Publications.
- [7] Kashyap, S. C. (2010). *Our Parliament* (6th ed.). National Book Trust, India.
- [8] Menon, N. (2012). *Seeing Like a Feminist*. Zubaan.
- [9] Pylee, M. V. (2009). *India's Constitution*. S. Chand & Company Ltd.
- [10] PRS Legislative Research. (2021). *Vital Stats: Functioning of the Parliament (2020–2021)*. Retrieved from <https://prsindia.org>
- [11] Shourie, A. (2006). *Governance, and the Sclerosis That Has Set In*. ASA Publications.
- [12] Supreme Court of India. *D.C. Wadhwa v. State of Bihar*, AIR 1987 SC 579.
- [13] The Constitution of India. (1950). Government of India. Retrieved from <https://legislative.gov.in>
- [14] Shakhder, S.L.: *The Process of Legislation*, Lok Sabha Secretariat, New Delhi, 2nd Edn., 1967.
- [15] The Constitution of India (As on 26th November, 2021), Legislative Department, Ministry of Law & Justice, 2021.
- [16] Kaul, M.N. and S.L. Shakhder: *Practice and Procedure of Parliament*, Lok Sabha Secretariat, New Delhi, 7th Edn., 2016.
- [17] *Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)*, Rajya Sabha Secretariat, New Delhi, 9th Edn., 2016.
- [18] In 2012, amendments to sections 5(1)(5), 9(g) and 13(9) of Securitisation Act, and amendments to sections 15 (proviso), 19(3A), 19(5), 19(5A), 36(2)(cc) to the DRT Act were introduced in Rajya Sabha and not in Lok Sabha
- [19] *On Parliamentary Procedures of Government of India*, Lok Sabha Rules
- [20] Such as the Recovery of Debts Due to Banks and Financial Institutions Ordinance, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002, etc.