

A TRENCHANT ANALYSIS OF THE PARLIAMENTARY FORM OF GOVERNMENT WITH SPECIAL REFERENCE TO INDIA

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ABSTRACT

Any nation endeavours to be formed on the pillars of democracy. Democratic legitimacy is something that is necessary for any country to flourish, be independent and self-sustainable. Countries can be governed by either type of governments i.e., parliamentary or presidential. As far as a country like India is concerned, the Constitution itself fosters the facets of parliamentary form of Government in the centre (Art. 74 and 75) as well as the state (Art. 163 and 164). A government in which the executive owes responsibility towards the legislature for its policies and actions, such a government is known as a parliamentary form of Government. The same is also known as cabinet government or Westminster model of government as the latter is prevalent in countries like Britain, India, Japan and others. As suggested by Ivor Jennings, it is called a cabinet government as cabinet forms the nucleus of a parliamentary system and the same is pertinent in a parliamentary form of government. The role of the prime minister is considered to be paramount in a parliamentary form of Government. As per the authors, since the parliamentary form of government is the best form of government for upholding the facets of democracy and self-sustenance, an attempt has been made to analyse and describe several important characteristics of the parliamentary system of governance. Further, the paper deals with the history and evolution of parliamentary form with special reference to India. The author has also described how the parliament in India functions and several important features associated with the same. Several advantages and disadvantages of the parliamentary system have also been discussed in the paper. Moreover, a comparison has been drawn between the presidential and parliamentary form of Government so that an open-ended approach towards research is possible in order to frame opinions regarding the best form of government. Lastly, the authors have given personal suggestions about how this form of government can possibly

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flourish in order to uphold the facets of democracy in a more efficient manner. A substantial part of the paper deals with the Indian Parliamentary system of governance.

Keywords: Parliament, Parliamentary form of Government, Cabinet System, Executive, Constitution

INTRODUCTION

A system in which a state has democratic governance where the parliament gives democratic legitimacy to the executive and power to command legislature which is also held answerable to the parliament is called a parliamentary system of governance. The government is headed by a different person and the state is headed by a different person in the parliamentary form of government system. This form of government is different from presidential system of government since in this system the government is headed by the same person who is also the head of the concerned state. Also, the democratic legitimacy is not derived from the executive of the state.

There can be countries that have parliamentary form of democracies but at the same time they might be monarchies having constitution, where the state is headed by a monarch whereas the government is headed almost always by a member of parliament, for example countries like Thailand, Japan, United Kingdom, etc. Also, many countries have parliamentary republic where the head of the state is a ceremonial president whereas the member of the legislature becomes the head of the government, for example Ireland, India, Germany, etc. In parliamentary republic countries South Africa, Botswana, etc. the state and government is headed by the same person, but he is elected by the parliament and hence he is answerable to it. In parliaments that have bicameralism, there almost every time the head of the government is a member of the lower house of parliament. Countries that have parliamentary form government are there in almost every part of the continents. Mostly, countries that were British colonies in past have subscribed to parliamentary system of government which is commonly called as Westminster system.

One of the key features of political system of India has been the parliamentary form of government. It is one of the salient features of Indian Constitution. Such a form of government came during British rule before India attained Independence. It came into complete existence from Government of India act, 1919 and acts that came subsequently. In 1947 when India attained independence the parliamentary form of government was already

there and hence; we already had the experience of running such kind of government therefore it will be safe to say that political party of British anticipated the Constituent assembly decision that approved the idea that India will in consonance with such form of government. In recent years the issues regarding this form of government has led to the uplifting of some double thoughts on such form of government and hence the future of such a form of government looks bleak. Therefore, a lot of India needs to put in a lot of efforts to continue with the functioning of same form of government in future.

CHARACTERISTICS OF PARLIAMENTARY SYSTEM OF GOVERNMENT

Government having Parliamentary system can be of two types i.e., Bicameral having two houses of parliament and Unicameral with one house of parliament. Usually under bicameral parliament the members of the lower house of the parliament are elected by the citizens of that country and hence they are given the power to run the executive whereas, members of upper house must be elected through some way from lower house.

Arend Lijphart, a scholar of democracy differentiated between Westminster and Consensus system of parliamentary democracies¹⁰⁶⁴. Westminster system is found in countries that were the British colony in past or if they are a part of commonwealth nation¹⁰⁶⁵. A plenary session and debate in parliament is more important in this system than committees. Some nations following this system are elected by plurality voting system for example, United Kingdom, Canada, etc. whereas, some use proportional representation system for example, Ireland. Consensus system is usually found in western European countries like Spain, Germany, etc. It has a semi-circular debating chamber. In this system committees play a more important role than the plenary session.

There lie some differences within the nations having parliamentary system in terms of its implementation which depends upon the way in which prime minister and the government is formed. Also, whether or not the approval of legislation by parliament is required is also a valid factor. The prime minister in many countries like India need to be a member of legislature, however in countries other than these have such a rule as a convention only and not as a law.

¹⁰⁶⁴ LIJPHART, AREND, *PATTERNS OF DEMOCRACY*, NEW HAVEN, 5 (2 ed. Yale University Press, 1999).

¹⁰⁶⁵ DAVID C, DOCHERTY, SEIDLE, F. LESLIE, [REFORMING PARLIAMENTARY DEMOCRACY](#), 3 (1 ed. McGill-Queen's University, 2003)

The Member of Parliament having majority support is likely to be appointed as the prime minister by the head of the state. Whereas in countries having Westminster system like United Kingdom, Canada, India, etc., the leader of the majority party in parliament becomes the prime minister of the country. The president who is the head of the state does the same appointment. Voting to choose the prime minister is not done instead the president chooses such a person whom he finds having the confidence of the parliament. Since the parliament has the power to remove the prime minister at any time by passing a no confidence motion against him. Therefore, after appointment as the head of the government he needs to gain a vote of confidence within the stated period.

In case there is no single party enjoying absolute majority then in that case the leader of the largest party is invited and asked to form the government and become the head of the government by getting a vote of confidence with a specific period. In case the leader of largest party is failing in forming the government then the other largest party has the opportunity to incorporate the government and if he also fails then this process goes so on and so forth until the head of the state finds that an election needs to be done. In case the parliament themselves nominate someone for the post of prime minister then in that case the president has no other option but to make him the prime minister. In many countries the prime minister has to mandatorily be a member of lower house of the parliament whereas, in many countries he can be any house's member.

Many countries like India, Pakistan, etc. having parliamentary democracies have made legislations in order to restrict switching of parties by the members of parliament after winning the election. According to this law once a person wins the election becomes the Member of Parliament then later on, he cannot be allowed to switch his party. In case he does so then he will lose his membership of parliament. Similarly, in situation where the member goes against the policies of his party or votes against his own party without stating a prior reasonable reason then in that case too, he will lose his membership¹⁰⁶⁶. The members can change their side according to their will even after the elections in countries like U.K., U.S., and Canada¹⁰⁶⁷.

¹⁰⁶⁶K. Khanna, "[Anti-Defection Law: A Death Knell For Parliamentary Dissent?](#)", NUJS LAW REVIEW, 7 (2013)

¹⁰⁶⁷S. Sanal Kumar, "[Anti-Defection Laws in India: Its flaws and its falls](#)", BAR & BENCH (Aug. 30, 2020 at 10:30A.M.), <http://www.google.com/amp/s/www.barandbench.com/amp/stroy/columns%252Fanti-defection-laws-in-inida-its-flaws-and-its-falls>.

ORIGIN AND GROWTH OF PARLIAMENTARY SYSTEM IN INDIA

This type of Government in India initiated from the administration of British colonies but originally originated as an outcome of persistent struggle and with the demand of India for a greater representation in government¹⁰⁶⁸. During the reign of the EIC (East India Company) when both the roles and responsibilities of executive and legislative body were in the hands of the Governor General of India, legislative body came in to existence for the first time. The structure of the Governor-general's council was changed by the Charter Act, 1833 to legislative council for every territory of British in India¹⁰⁶⁹.

According to Indian Councils Act of 1861, the Imperial Legislative Council succeeded Governor General's Council. There were amendments in 1892 and 1909 to broaden the functions of the body and to make it more representative. Indian council act 1892 allowed 39 Indian members to Imperial Legislative Council whereas Indian Council Act 1909 allowed 135 members to the Imperial legislative council¹⁰⁷⁰. The Act of 1909 made sure that the small groups of Indian electors choose their representative in order to represent minority groups of some specific religion and other social groups. Governor was not at all made responsible for those elected representatives. Legislations of 1892 and 1909 of Parliament did not accurately take discourse of the huge dissatisfaction with the British rule.

According to Government of India Act, 1919 the British Parliament passed the very famous Montague-Chelmsford reforms¹⁰⁷¹ that for the very first time introduced a bicameral legislature i.e. a lower house and an upper house¹⁰⁷². Foundation of Indian structure of federalism was laid down by the Government of India Act 1935¹⁰⁷³. A Bicameral Federal legislature that consisted of Council of States and Federal Assembly were established by this

¹⁰⁶⁸ I, SUBHASH KASHYAP, OUR PARLIAMENT 4 (1st ed. National Book Trust, 2011).

¹⁰⁶⁹ *Id.*

¹⁰⁷⁰ Living Heritage, *Parliament and Empire: Government of the Raj 1858–1914*, UK PARLIAMENT (Aug. 30, 2020 at 10:45 A.) <http://www.parliament.uk/about/living-heritage/evolutionofparliament/legislativescrutiny/parliament-andempire/parliament-and-the-american-colonies-before-1765/government-of-the-raj-1858-1914>.

¹⁰⁷¹ Encyclopaedia Britannica, *Montagu-Chelmsford Reform*, ENCYCLOPAEDIA BRITANNICA, (Aug. 30, 2020 at 10:45 A.) <https://www.britannica.com/event/MontaguChelmsford-Report>.

¹⁰⁷² Rajya Sabha Secretariat, *An Introduction to Parliament of India*, RAJYA SABHA SECRETARIAT (Aug. 30, 2020 at 10:45 A.M.), http://rajyasabha.nic.in/rsnew/Parliament_of_India.pdf, archived at <https://perma.cc/M2PT-WCPD>.

¹⁰⁷³ [Anubhav Pandey](http://www.legislation.gov.uk/ukpga/1935/2/pdfs/ukpga_19350002_en.pdf), *Government of India Act, 1935*, BLOG IPLEADERS, (Aug. 30, 2020 at 11: 30A.M), http://www.legislation.gov.uk/ukpga/1935/2/pdfs/ukpga_19350002_en.pdf, archived at <https://perma.cc/SV6Z-WD5R>.

act¹⁰⁷⁴. Indian constituent assembly after the Indian Independence Act became first sovereign legislature of India¹⁰⁷⁵. The constituent assembly that was formed under Dr. B.R. Ambedkar (chairman) worked till 1952 as a provisional Parliament of India and then later constitution of India¹⁰⁷⁶ which says that “Union shall have a parliament that shall include a President, Council of State and the House of People”¹⁰⁷⁷ established the current Parliament.

CONSTITUTION AND FUNCTION OF THE INDIAN PARLIAMENT

Parliament of India consist of three bodies i.e. the president, Lok Sabha and Rajya Sabha. Parliament is considered as the largest body of the country¹⁰⁷⁸. A method of proportional representation with the help of single transferrable vote is used to elect the president. Council of Ministers will advise the president and he shall act according to that advice. The life time of Lok Sabha is that of five years and its members are elected by direct elections and Universal Adult Franchise. Speaker who is the officer presiding over Lok Sabha gets elected by the existing members. His responsibility is to conduct the proceedings of Lok Sabha with peace. In Rajya Sabha the members have their election by the member legislative assembly of a state whereas 12 members get elected directly be the president of India. There is no dissolution of Rajya Sabha as it is a house of permanent nature with 33 percent of its members retiring every two years. Members of Rajya Sabha enjoy membership for six years. The house is chaired by vice president who is the ex-officio chairman of the Rajya Sabha¹⁰⁷⁹.

FEATURES:

Some of the major features of this form of government in India are as follows:

1. Head of the state is the nominal head and he holds a formal position in the Parliamentary form.
2. Prime minister of India is the government head and he is the formal head of the state. Appointment of the Prime minister is done by the President under Article 75 of the Constitution of India. Council of Ministers headed by the Prime Minister under Article 74 aids and advices the president to exercise his function.

¹⁰⁷⁴Supra

¹⁰⁷⁵Id.

¹⁰⁷⁶INDIAN CONST. art. 79.

¹⁰⁷⁷Id.

¹⁰⁷⁸National Portal of India, *Indian Parliament*, NATIONAL PORTAL OF INDIA, (Aug. 30, 2020 at 11:45 A.M), <https://india.gov.in/my-government/indian-parliament>.

¹⁰⁷⁹Shodhganga, *Parliamentary system of government*, SHODHGANGA, (Aug. 30, 2020 at 11:45 A.M), https://shodhganga.inflibnet.ac.in/bitstream/10603/58893/10/09_chapter%202.pdf.

3. Executive forms an essential part of the legislature. In India a person can become member of executive only when he is the Member of Parliament. If a person is appointed as a minister and he is not a member of the parliament then constitution provides that he can stay at that post for six consecutive months within which he has to become a member of the parliament otherwise he will cease to be a minister.
4. In the election whichever party wins the majority of seats gets a chance to form the government. The leader in majority winning party is invited by the president to form the government. President on getting advice from the Prime Minister appoints the council of ministers. In case of no majority the president invites the leader of the majority party to form a coalition government.
5. The Prime Minister along with the Councils of Ministers is collectively accountable for acts of the government. In case of no confidence in the government a no confidence motion can be passed by the lower house of the parliament in order to remove that government. A no confidence motion can be introduced only in the lower house of the parliament.
6. Prime minister is the real head of the state in government. Prime minister is the head of the council of ministers and he is also the head of the government ruling in the state. He also plays an important and substantial role in the working of the government.
7. Even if a party gets the all seats of the parliament then also any government cannot enjoy the majority by winning all the seats. Since the opposition in Indian constitution plays a significant role in keeping a check over the arbitrary use of power by the government.
8. Like most of the countries enjoying parliamentary form of government India also have bicameral legislature. All these countries have the lower house of parliament member elected by the people of that state. Lok Sabha gets dissolved once the tenure of the government expires or when the government loses its majority in the parliament. Also, the Lok Sabha can be dissolved by the President on the advice of the Prime minister¹⁰⁸⁰.

ADVANTAGES & DISTAVANTAGES OF A PARLIAMENTARY SYSTEM

Advantages:

¹⁰⁸⁰Hemant Singh, *Features and Advantages of Parliamentary System in India*, JAGRAN JOSH, (Aug. 30, 2020 at 11:45 A.M), <https://www.jagranjosh.com/general-knowledge/parliamentary-system-in-india-1437202137-1>.

Some of the major advantages of the parliamentary system of government are as follows:

1. Parliamentary form of government has one common advantage i.e. it is easier and faster way of passing the legislation¹⁰⁸¹.
2. The executive under parliamentary form of government possess more votes while passing legislation because of the reason that the executive depends upon the members of the legislature¹⁰⁸².
3. In case of presidential form of government, the executive actions are free from the legislature, as it is the president who usually takes the decisions. A situation of deadlock can arise in case the executive and legislative under this kind of system includes members from different parties.
4. The will of the people of the state are much more respected under the parliamentary form of government since an executive according to the manifesto of his party is primarily voted into power.
5. In order to speed up the actions of legislature, parliamentary form of government has for the nation that is ideologically, ethnically divided, an attractive feature.
6. In parliamentary form of government most of the times people vote according to the political ideas of the whole party and not only on the basis of one person as it is in the case of president.
7. Also, according to scholars like Juan Linz, Bruce Ackerman parliamentary form of government is stronger than any other form and hence it is less likely for it to collapse.¹⁰⁸³

Disadvantages:

Some of the major demerits of the parliamentary form of government are as follows:

1. One of the major criticisms of this type of government is that the head of the government is not elected in most of the cases.

¹⁰⁸¹Weaver, R. Kent, "Are Parliamentary Systems Better?", 3 THE BROOKINGS REVIEW, 16 BROOKINGS INSTITUTION PRESS, 25 (1985).

¹⁰⁸²Norris, Pippa, "The Politics of Electoral Reform in Britain", 16 INTERNATIONAL POLITICAL SCIENCE REVIEW / REVUE INTERNATIONALE DE SCIENCE POLITIQUE, 65 SAGE PUBLICATION, 78 (1995).

¹⁰⁸³Enfranchise's blog, *Advantages & Disadvantages of Parliamentary System in India*, ENFRANCHISE'S BLOG, (Aug. 30, 2020 at 11:45 A.M), <https://enfranchise.wordpress.com/advantages-disadvantages-of-a-parliamentary-system/>

2. In parliamentary form, legislature under the influence of the leadership unit elects the prime minister. Therefore, the head of state in that case is dependent upon the party's leadership unit.
3. Another major disadvantages of such a system is that in case of absolute majority the parliament exercise an absolute power since there remains no one to oppose their decisions and there is no way to veto the legislations.
4. Executive branch can receive too much power from the legislative which leaves very little space for checks and balances on the executive.
5. Another criticism is that of ineffective governance in case of parliamentary form of government due to unstable coalition, no confidence motions, etc. for example countries like Israel, Italy, France, etc.
6. There is also not any fixed calendar of election since it can happen at any time, which always keeps the head in the state of uncertainty regarding his position.
7. In some systems it also gives arbitrary power to a ruling party to schedule an election according to their will as in when it feels that they are likely to win the election and can avoid elections when he is likely to lose. Hence it can become a government which has no end of its ruling.
8. One of the major criticism of this form of government is that this form does not give chance for a popular face to become the president since he does not have apolitical party and hence cannot in almost every case get support from the member of the parties to become the prime minister since there is no option for him to solely run for the election of prime minister.
9. In this form of government, the prime minister can lose his position just because he lost his seat in parliament, irrespective whether he is popular choice for being the prime minister in whole country¹⁰⁸⁴.

COMPARISION BETWEEN PRESIDENTIAL AND PARLIAMENTARY FORM OF GOVERNMENT

Differences between Parliamentary form of government and Presidential form of government are as follows:

¹⁰⁸⁴*Id.*

1. Parliamentary form of government is a form of government where there is a close relation between legislature and executive; it is a form of government where the representatives of the parliament are elected by the citizens of the country. Whereas, in presidential form of government where government has three organs namely, executive, judiciary and legislature and all these organs work separately from each other. In such system of government, the chief executive is the president and directly elected by the citizens of that state.
2. In parliamentary form of government leader of state and government which act as dual executive and they both are different. Whereas, in presidential form of government there is only one executive since the state and the government is headed by the same person.
3. In parliamentary form of government, the Member of Parliament who belongs to ruling party can become ministers; a person who is not a member of the parliament cannot become the minister of the state. Whereas, in presidential form of government, the persons who do not belong to the legislature can also become minister in the government, instead they are usually experts of industries.
4. In parliamentary form of government, the executive shall be answerable to either House of Parliament. Whereas, in presidential form, the executive is not answerable to either of the two Houses.
5. In parliamentary form of government, the lower house of the parliament can be dissolved on advice of prime minister. Whereas, in presidential form the lower house of the parliament cannot be dissolved by the president.
6. In parliamentary form, though the tenure of the head of the government is of five years still the tenure is not fixed since it depends upon the abundance of support in the parliament. Whereas, in presidential form of government, president has not fixed tenure.
7. In parliamentary form of government, between legislature and executive there is a concentration and combination of powers. In this form of government, the facets of separation of powers are not strictly followed. Whereas, in presidential form of government facets of separation of powers are absolutely and strictly followed. The organs of government namely, executive, legislature and judiciary work separately.

8. In parliamentary form of government, discipline of party is very important and each and every member of the party has to abide by the decisions of the party. They cannot go against the decision and their policy by voting against his party. Whereas, in presidential form of government the discipline of the party is less important and the member of party can vote against his own property and this does not weaken the government.
9. In parliamentary form of government, the powers of the government is not vested in the jurisdiction of one person instead it is divided hence it is less autocratic in nature. Whereas, in presidential form of government, the powers of the government are vested in the authority of only one person hence such type of government is an autocratic kind of government.¹⁰⁸⁵

CONCLUSION AND WAY FORWARD

Parliamentary form of government has a balanced approach since it has two executive head one is the nominal head who is the head of the state and other one is the real head who leads the government. Countries that have this form of government are Germany, Italy, Japan, etc. there are certain merits of this form of government such as in this form of government legislature and executive work in good coordination, the chance of government becoming autocratic is lesser in it, the government in this form is always answerable to the parliament, this form helps in providing equal representation to even the minority groups of the state, the head of the government i.e. prime minister can be changed at any time and hence it makes it a flexible. On the other hand, there are certain demerits of this form of government such as there is nearly no separation of powers between different organs of government, problem of bad legislator is also there as the head is only concerned about the executive branch, such a branch is highly unstable as the head can be removed at any time when he loses the majority in the parliament and because of this insecurity the council of ministers are often shy of taking instant decisions, the head and the ministers can only be formed of the ruling party, the head is bound to abide by the party politics and has to go in sync with party policies.

Parliamentary form of government exists in India as well which has been borrowed from United Kingdom, but there exist few differences between the two such as here in India the

¹⁰⁸⁵Mariya Paliwala, *Presidential System vs. Parliamentary System*, BLOG IPLEADERS, (Aug. 30, 2020 at 11:45 A.M), https://blog.ipleaders.in/form-ofgovernment/#Difference_between_the_Parliamentary_and_Presidential_forms_of_the_Government

prime minister can be a member of either house of the parliament whereas, in United Kingdom the prime minister has to be a member of lower house of Parliament. Secondly, In India once a member becomes the speaker of the house then also, he continues to be the party member, and he just has to maintain the unbiased attitude in the proceedings of the house whereas, in United Kingdom once a member is appointed as a speaker his party membership terminates instantly.¹⁰⁸⁶

Hence, it is high time that we should make a system in which the ones who are elected by us to become the Member of Parliament should focus on good governance rather than just to attain power. From the past seventy years this mode of government has been tested successfully in India. Furthermore, in order to make our democracy stronger we need to bring reforms in election procedures in order to rectify the loopholes present in our current system by putting restriction on the expenditures of the parties during elections. Also, ensuring free and fair practice during elections by every candidate is also a responsibility upon the citizens of any country.

¹⁰⁸⁶ *Id.*