



The Fundamental Aspect of Parliamentary Democracy : A Review

ORIGINAL ARTICLE



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Abstract

If there is a danger ahead, it seems to me to lie in the use of great financial and industrial power to prevent the will of the electorate being made effective by the Government of its choice. There is a risk to which Mr. Herbert Morrison has recently and vigorously drawn attention. the parliament should be a mirror of national opinion, and its member should represent that opinion in proportion to the member of electors who support any given outlook. Our age is one of turbulence and confusion, in which the large-scale breakdown of traditional values has made many doubt the validity even of the institutions which lie at the basis of our national life. Parliamentary democracy will be meaningless unless we adhere to the principles of democratic way of life. We have managed to make our large democracy grow ever larger in size, but also become ever smaller, even petty, in the actual workings. The true parliamentary spirit, evolved by the mother of parliaments is, that today's opposition is tomorrow's Government and that there must be an understanding that do not do anything that you

do not want the opposition to do tomorrow. It has rightly been said that- 'आत्मनः प्रतिकूलानि परेशाम् न समाचरेत्'. They occupy the personality and position of the persons who occupy them that is why it has been said the constitution of men make the constitution. The essential prerequisites of parliamentary Government according to the joint committee of parliament on Indian Constitutional Reform, 1934.

Key Words

Mother of Parliaments, Concentration Camp, Registration for the Cabinet, Collective Responsibility.

"Parliamentary Government", wrote Professor Amery, "is already, dead, and has been replaced by Cabinet Government."¹ He also opined that Parliament is threatened either by bodies like a party's executive committee, or by out side organizations like the federation of British Industries or the Trade Union Congress.² The learned author found fault with the opinion of Walter Bagehot, which he expressed in his book, perhaps, the first of its kind, that 'the system under which we are governed is parliamentary Government and that the Cabinet is the hyphen that joins, the buckle that links, The executive power to its legislative power.'³ However, Professor Amery appreciated his view that "A parliament is nothing less than a big meeting of more or less idle people".⁴ This the old man, wrote two years after the famous speech of John Bright that England is the, "mother of Parliaments".⁵

A revisit of British Parliamentary form of Government reveals that it has become an organ of Registration for the cabinet, a body of miscellaneous amateurs, whose discussions do not count, whose criticism and investigations go unheeded, whose independence has been impaired by the rigidity of party discipline and that it

has lost the high status it once enjoyed when the whole nation watched its passionate interst in the epic contests in which Men like Gladstone and Disraelie Crossed swords in debate. Delegation of powers to ministers and departments, and the inability of Parliament to protect its freedom have also become the features of British Parliament.

In 1962, Professor Wilfred E. Binkley opined that. The theory of English Parliamentary System is fascinating for amateurs who know neither its historical evolution nor its prosaic practical operation.⁶ It has also been commented that “The House of Commons is terribly outdated, an old man’s- Club, With too much spare time loosing.”⁷

Professor Laski is of the view that the complaints against the House of Commons does not mean that we should be ready to get rid of it. The learned author writes that “I think most of Critics whose goodwill is not in doubt, would, if pressed, admit that the real alternative to House of Commons is the Concentration Camp.”⁸ He agrees with the view that parliament of today must be made more efficient in relation to its business.

He further writes with all the changes that have taken place in it during this last half century, I see no decline in its greatness, nor, any ultimate danger that it should be by-passed in its fundamental purposes, above all in the most fundamental of all its purposes, the duty to see that the conditions are maintained which protect the freedom of the ordinary citizen.⁹

However, what he predicted 60 years ago has come true in relation to the House of Commons and other parliamentary institutions of the world.

He wrote, if there is a danger ahead, it seems to me to lie in the use of great financial and industrial power to prevent the will of the electorate being made effective by the Government of its choice. There is a risk to which Mr. Herbert Morrison has recently and vigorously drawn attention. In a period of rapid social change, it is a risk that might easily become a grave one; for it represents the effort of men who, though small in numbers, have the immense powers, great wealth confers, to challenge, by means outside the ordinary conventions of Parliamentary life, the right of the House of Commons to support the Government of the day, and put its measures upon the Statute Book. That is the method which invites all parties to a disrespect for constitutional tradition. If we can overcome this risk we may be able to make the social and economic changes our national life requires while retaining the unity of a commonwealth that can live at peace with itself. In the light of history, it is difficult to imagine a more splendid achievement.¹⁰

He was of the view that the parliament should be a mirror of national opinion, and its member should represent that opinion in proportion to the member of electors who support any given outlook. A member of supporting inference indeed are brought forward to strengthen there; The danger of majority tyranny, the executive authority of party works, the value of the independent member who can give undivided allegiance to his own conscience. None of these, however is so important, as the two major premises to which I have refereed I do not believe that there is any real substance in the view that Parliament should be a mirror of the national opinion. For, first of all, there are many matters, and these matters of real importance, upon which no national opinion exists and second, there are many matters which are vital of the life of our people a judgement upon which is impossible in an electorate of some thirty million people. That is not all. There are moments when the electorate is in a fringy of divided excitement about some issue that is quite transient in character.¹¹

In fact, parliamentary democracy will be meaningless unless we adhere to the principles of democratic way of life. Professor Laski has rightly pointed out that “The one way to adopt our selves to the claims of a swiftly changing world with the ease that comes from a grasp of why the claims make one road the road to life and the other to road to death. It is one of the keys to National survival. It was there alization of its importance which led plato to insist that minister of educations is more important than the minister of war.”¹²

The whole nation must be prepared to overcome this risk of parliamentary form. It must stop to work as an organ of the registration for the cabinet. The cabinet must remain, what Walter Bagehot called, the hyphen that joints and the buckle that links the executive power of the Government to its legislative power. Sir Edward coke, delivering a speech on 8 May 1628, said that ‘we have a maxim in the House of Commons and written on the Walls of our House, that the old ways are the Safest and Surest ways.’ When we compare those old ways

with the present, we find a change in parliamentary Institution. Depicting the whole new picture of the 'House of Politics', Gopal Krishn Gandhi writes – Our democracy is also about manipulation. It is also about undeserving candidates fighting dirty, fighting sly, winning dishonorably with a smirk or losing unsportingly with vengeance under the breath.¹³

Where, therefore, has the human sense and good cheer of our Parliament gone? Surely, it is not the opposition alone that has robbed our institution of it. It saddens me greatly to have to rebut the Hon'ble Prime Minister, who chooses to, almost always declaim his views outside the Parliament, and that, too, about the Parliament. He is after all, the head of the Government, he is a consequence of Parliament, not an outsider; he has to understand the failings of it, to sympathise, to be with it in both its strengths and its weaknesses; to value and nurture it, not to shun it. Above all he must attend to all the concerns of it, vital or trivial, just or unjust, for Mr. Prime Minister that is a living organism, not just a hide-bound institution. Doubtless, there would arise occasions when its actions border on the unwise, or even totally unjustified, but those are the very situations in which the Leader must lead. More when those sudden and awesome storms of contention shake the very pillars of Parliament; it is then that the Prime Minister must step in, take command, not abandon the Institution and proceed to comment on it as if uninvolved, unconcerned, unconnected. Let us never forget that the spontaneity of the House, or its debates, even an absence of them is an integral of this in situation; a part of its personality.¹⁴

Institutions are living being. They occupy the personality and position of the persons who occupy them that is why it has been said the constitution of men make the constitution, S.N. Sinha, while inaugurating the constituent assemble on Dec. 9, 1946 as provisional chairman quoted the famous lines of Joseph story, one of the greatest American Constitutional lawyers that – "The structure has been erected by architects of consummate skill and fidelity; its foundations are solid; its compartments are beautiful as well as useful; its arrangements are full of wisdom and order; and its defences are impregnable from without. It has been reared for immortality, if the work of man may justly aspire to such a title. It may, nevertheless, perish in an hour by the folly, or corruption, or negligence or its only keepers, THE PEOPLE. Republics are created – these are the words which I commend to you for your consideration – by the virtue, public spirit, and intelligence of the citizens. They fall, when the wise are banished from the public councils, because they dare to be honest, and the profligate are rewarded, because they flatter the people, in order to betray them."

The main functions of Parliament are controlling, criticizing, questioning and debating.

The function of opposition has not been up to the mark and up to the expectation of our founding fathers. It was hoped that while in opposition, the congress party would play an active role of opposition, would be responsible opposition and will not adopt the obstructive tactics but the expectation were belied and when this party was in opposition. It showed the path of obstruction in parliamentary proceedings and the present opposition is following the suit. If there is any difference between the two conducts, it is the difference of degree and not of kind. The whole nation has witnessed such things and nation has not approved of such conduct.

On the eve of his laying down of office, the then president Dr. Rajendra Prasad, gave a farewell address to MPs. On May 1962, the late president said that "The things here and every where are such that they do us no credit. On three counts he admonished the nation. (1) People getting attached to the questions that divide us. (2) People depending too much on the Government. (3) Corrupt practice during elections, which should not have been allowed to happen."

It has been the expectation that an alternate electorate would throw out an undesirable Government. The essence of parliamentary democracy, has not been fulfilled. The basic difficulty seems to be that the power is in the hands of the un-understanding ruler voters while understanding is with the understanding is with the educated urban people, who are in minority and thus helpless to alter Government. The electoral (rural) base seems to have been stabilized and the floating vote has either not developed or is very ineffective.

The problems of a democratic system are as follows:

Hero-worship among masses. Dr. Ambedkar said that the second thing we must do is to observe the caution which John Stuart Mill has given all who are interested in the maintenance of democracy; namely, "not to lay their liberties at the feet of even a greatman, or to trust him with powers which enable him to sub-vert their institutions." There is nothing wrong in being grateful to greatmen who have rendered life-long services to the

country. But there are limits to great fulness. As has been said by the Irish Patriot Daniel O Connell, no man can be grateful at the cost his honour and no women can be grateful at the cost of her chastity and no nation can be grateful at the cost of its liberty. This caution is far more necessary in the case of India than in the case of any other country. For in India Bhakti or what may be called the path of devotion or hero worship, plays a part in its politics unequalled in magnitude by the part it plays in the politics of any other country in the world. Bhakti in religion may be a road to the salvation of the soul. But in politics Bhakti or hero worship is a sure road to degradation and to eventual dictatorship.¹⁵

Tyranny of majority has shut the voices of opposition. For successful running of parliamentary democracy, it is essential that there must be a strong public-opinion and legislative opinion are reflected in the functioning. There must be a strong committed and determined leadership at all steps of ladder. It also requires a strong cadre of men, full of sympathy and zeal.

The other defect in our parliamentary democracy is that instead of leading the people our leaders are being led by the people. Thus, the second president of our republic, the late Dr. Radha Krishnan, said that "Our leaders should lead the people instead of being led by them."¹⁶ According to Professor K.V. Rao "Till very recently we had a leadership in this country that could evolve policies and then educate the people on their rightness. Thus, they were representatives of the people to think on their behalf and act wisely.

But today we have a change in this. To day's leaders in order to get elected must feel the pulse of the people; know their mind and cater to their needs. This may be real democracy according to one definition, but where the "Mass man" has lost his direction and purpose in the life the Government would also lose its direction and purpose.

Under the terms of the 1935 Government of India Act not only did the provinces lack even a semblance of popular Government (the situation in the Princely States was worse), but the small electorate that existed was itself thoroughly fragmented. The franchise was restricted by property, educational, and other qualifications to approximately 15 percent of the country's population, and the resulting electorate was split into no less than thirteen communal and functional compartments for whose representatives seats were reserved in the various parliamentary bodies. Seats in the federal lower house traditionally a popular assembly-were filled entirely by indirect election, largely from the lower houses of provincial assemblies, and in all cases on the basis of communal or functional electorates. Quite evidently, the members of the Constituent Assembly could not pursue the goals of national unity and stability by perpetuating a system of Government that accentuated existing cleavages in Indian society and tended to create new ones.

For this reason the Assembly decided to attempt a drastic cure-knowing that half-way measures would be almost sure to fail. The Constitution provided for universal, adult franchise, joint electorates, in which all groups could contest for seats, replaced separate, communal electorates. There were to be neither weightage of representation for minorities nor reservation of seats (except for Scheduled Castes and Tribes). The lower houses both in the states and at the centre were to be directly elected by adult suffrage. Only the relatively powerless upper houses were to be, even in part, indirectly elected. At the centre, members of the upper, federal house, or the Council of States, were to be chosen by the members of the lower houses in state assemblies. In the upper houses of provincial assemblies, called Legislative Councils, one-third of the membership was to be elected by the members of the Legislative Assemblies and the remainder was to be directly elected from territorial constituencies by special electorates consisting of the members of municipal, district, and other forms of local Government, of university graduates, and of teachers in higher schools.

Although the Assembly's main task of achieving strength through unity overshadowed everything else during the framing of the Legislative provisions, there were other issues that had to be resolved. Should Indian legislatures, for example, have second chambers, either in the provinces or at New Delhi? This was a question which, at the national level, involved the place of second chambers in federal unions. Then, once it was decided to have upper houses, there arose the subsidiary question of their composition. The Assembly did not consider in detail the authority and powers of the legislatures when framing the legislative provisions. Their wide powers would be made apparent elsewhere in the Constitution, as in the clause giving legislatures almost unlimited authority to expropriate property.

The subject of political parties received little attention in the Assembly. Members made obeisance to the ideal of a 'loyal opposition' and to the desirability of having two strong parties to ensure the traditional working of parliamentary democracy and cabinet Government, but they wasted no time on what in India, at least, was a largely theoretical question. India, Assembly members knew, would have dominant-party, Congress Government for a long time to come; they were aware of the beneficial results this unifying force could have during the early years of independence. They believed that, even lacking a two-party system, Indians could make parliamentary democracy work and time has so far proved them right.¹⁷

We must remember the fear expressed by the chairman of our constitution assembly Dr. Rajendra Prasad, who became the first president of India.¹⁸ He said "I would have liked to have some qualifications laid down for the members of the legislatures. It is anomalous the we should insist upon high qualifications for those who administer the law but none for those who make it except that they are elected. A law giver requires intellectual equipment but even more than that capacity to take a balanced view of things, to act independently and above all to be true to those fundamental things of life, in on word to have character. It is not possible to devise any yardstick for measuring the moral qualities of a man and so long as that is not possible, our constitution will remain defective.

The role played by our lawmakers has made the worst fear of our great president totally realized. It is a matter to be considerably by every body who is any body.

The word parliament was used in 1247 which meant a deliberative body. Simon de Montfort appointed certain persons to be guardian of peace and in 1265 he enlarged its shape and called the first meeting of parliament in that year in Westminster hall. It is here that first model Parliament met that is why the parliamentary form of British Government is called the Westminster Model. The parliament of great Britain was created by the treaty of union of 1707 and the parliament of the united kingdom of great Britain and Ireland was formed by the Amalgamation in 1801 of the parliaments of great Britain and of Ireland.

Indian Parliament

It has been rightly observed that 'the general pattern of our parliament is the same as that of the British parliament',¹⁹ Chapter II of part V of our Constitution has used the word parliament. Instead of using the expression the union legislature it means that our parliament is much more than a legislative body, its activities go beyond merely legislating for union, for certain purposes it is a constituent assembly for India.²⁰ The essential prerequisites of parliamentary Government according to the joint committee of parliament on Indian Constitutional Reform, 1934, are:

(a) Principle of majority rule, (b) The willingness of minority for the time being to accept the decisions of the majority. (c) The existence of great political parties (d) The existence of a mobile body of political opinion. The known features of this form are:

1. That the executive head of state, hereditary or elected, is nominal.
2. That cabinet is the real executive.
3. That Prime Minister is the key stone of cabinet arch. He is *Primer inter pares*.
4. That the tenure of the cabinet is dependent on the will of the legislature.
5. That Cabinet is collectively responsible to the Lok Sabha. Cabinet Swims and Sinks together.

Thus, the essential feature of this form is that ministers must be members of parliament, and must resign office if they are unable to command the confidence in the House of commons.²¹ The learned author is also of the view that. 'Parliament does not govern; A strong executive Government tempered and controlled by constant, vigilant and representative criticism is the ideal at which parliamentary institutions aim.²² The Fundamental principle is that minorities, however, small be able to criticize the administration.²³ The cabinet assured of a stable majority dominates the parliament through Prime Minister and because of it responsible Government would, "appear to have suffered a strange and alarming inversion. The cabinet is no longer responsible to the commons; the commons has become instead responsible to the cabinet."²⁴

The Principle of collective responsibility is introduced by Article 75(3) of our constitution and Rule 198 of procedure and conduct of business in Lok Sabha refers to motion of confidence against the council of Ministers

and not against individual Minister. However, 'There may be an occasion when the conduct of Minister may be censored if he or his subordinates have blundered and have acted contrary to law.'²⁵

It must be remembered that parliamentarism denotes that constitution, procedure and structure of parliament must not be overruled or damaged in the interest of a particular party. It seems that the opinion of the author of English Constitution.²⁶ Has come to be up-to-date that "A parliament is nothing less than a big meeting of more or less idle people." Our "New Maharaja's" must avoid to be termed so. Parliament must remain a deliberative body where discussion, debate, decision must be the part of the proceeds of the parliament.

According to Dr. Ambedkar "As it is stated our constitution as a piece of mechanism lays down what is called parliamentary democracy. By Parliamentary democracy we mean one man, one vote. We also mean that every Government shall be on the anvil, both in its daily affairs and also at end of a certain period when the voters and the electorate will be given an opportunity to assess the work done by the Government."²⁷

The theory and practice of Democracy and Parliamentary form of Government demands that we should not only spend our life for a free democratic states but we should also be practicing democrats.

References

1. Thoughts on the Constitution 1945, p. 45.
2. Ibid.
3. Walter, Bagehot (1867) *English Constitution*. Chapter V, Chapman and Hall, London, p. 31.
4. Ibid.
5. Birmin, Gham (1865) Birmin Gham Speech, 18 January in London.
6. Wilfred, E. Binkley (1962) *President and Congress*, 3rd edition, Chapter XVII, Vintage Books, New York.
7. Williams, S. (1982) *Observer sayings of the year*. 3rd January 1982, 164 Queen Victoria Street, London, ECGV, 4DA, United Kingdom.
8. Laski (1951) *Reflection on the Constitution*, University of Manchester, University Press, 8, 10 Wright Street, Manchester, p. 16.
9. Ibid, p. 92.
10. Ibid, p. 93.
11. Ibid p. 54.
12. Ibid, p. 212.
13. *The Hindu*. Dec. 26, 2010, p. 1, Sunday Magzin, N. Ravi at Anna Salai, Chennai.
14. *The Hindu*. 25 Dec. 2010, p. 7, Anna Salai, Chennai.
15. CAD Vol. XI, Constituent Assembly of India, (Official Report) Lok Sabha Secretariat, Parliament House, New Delhi, No. 1, p. 978-79, 25 Nov. 1949.
16. *Statesman*, News Paper, 30 Jan. 1968, Delhi edition, Statesman House, Connaught Place, New Delhi.
17. Austion, G. (2020) *The Indian Constitution, Corner Stone of a Nation*. Oxford University Press, Thirty Seventh Impression, Asaf Ali Road, New Delhi.
18. Constituent Assembly of India, (Official Report) Lok Sabha Secretariat, Parliament House, New Delhi-110001 CAD Vol. 12, Constituent Assembly of India, (Official Report) Lok Sabha Secretariat, Parliament House, New Delhi, p. 993.
19. Lal, A.B. (1956) *The Indian parliament*, Chaitanya Publishing House, Allahabad, U.P., p. 11.
20. Rao, K.V. (1966) *Parliamentary democracy of India*. World Press Pvt. Ltd., Kolkata, p. 91.

21. Ilbert, Parliament, 1950, p. 131.
22. Ibid. at p. 103.
23. Jennings, parliament, 1948, p. 8.
24. Dawson- Government of Canada, 1949, p. 434.
25. Common Cause, Union of India, (1999) 6 SCC 667 at 700.
26. 1867, Chapter V.
27. CAD Vol. VII, Constituent Assembly of India, (Official Report) Lok Sabha Secretariat, Parliament House, New Delhi, No. 9, p. 494-495.

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