



IS THE INDIAN POLITICAL OPPOSITION STRUCTURALLY WEAK? - ADVOCATING FOR OPPOSITION RIGHTS

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ABSTRACT

Role of Opposition plays a key role in the health of any democracy. Formal Political Opposition in India has been marked with inconsistency and ambiguity. The Question as to whether any statutory provision be enacted to recognize this position was answered in negative by the Constitutional makers as they felt such can be developed later. The later developments in Recognition are marked with controversy as the directives issued by the Speaker and that of the Salary and Allowances of Leaders of Opposition in Parliament Act are at loggerheads, further the absence of a Supreme Court ruling has left the matter still in muddled waters. Recognition as Leader of the Opposition gives the opposition more concrete and authoritative support to the voice of opposition. Such is even more important in the Indian context in contemporary times where the government has time and time again used its numerical strength to circumvent and silence opposition and their concerns. It is thus obvious that the opposition is not only structurally weak but is weak in its essence too. This is an alarming situation as democratic traditions are increasingly changing with authoritative ones. Therefore, this paper argues for an urgent need to address the problems associated with opposition to enable it to play its role in ensuring the smooth and healthy functioning of democracy. Firstly, we can start by making a constitutional post like that of the President. Secondly, the opposition in India can and shall consider following the British tradition of shadow cabinet wherein the working of each ministry is observed by a designated member of the opposition. Furthermore, reserving certain days in a session of parliament for the opposition wherein they take charge can be an effective method.

KEYWORDS: Opposition Rights, Supreme Court, Constituent Assembly, Opposition leader.

INTRODUCTION AND BRIEF HISTORY

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Robert A. Dahl stated that there were

*“three great milestones in the development of democratic institutions – the right to participate in governmental decisions by casting a vote, the right to be represented, and the right of an organized opposition to appeal for votes against the government in elections and Parliament”*³

The word opposition has its root in Latin, in political terms, it may be regarded as a system of constitutional checks and balances guarding against power abuse and modifying the actions of government.⁴ In the words of Gilbert Campion, Parliamentary Opposition *is the party for the time being in the minority organised as a unit and officially recognized, which has had experience of office and is prepared to form a government when the existing ministry has lost the confidence in the country. Furthermore, it must have a positive policy of its own and not merely oppose destructively to ruin the game for the sake of power*”.⁵ It is thus clear that the opposition party is the party next to only the ruling legislature party in terms of the support it enjoys or has the highest numerical strength barring the legislature party forming the government.

According to political philosopher Jeremy Waldron, there are two main functions of the opposition⁶ -

1. To hold the government accountable for policies that they pursue in the parliament, this is achieved through debate, deliberation and questioning of the government by the opposition⁷
2. To act and to serve as “government in waiting” i.e. to be ready to form government when and if the current government before the expiration of its term due to some reason collapses. This has to be achieved by criticizing the government wherever such criticism is warranted and by presenting an alternative agenda of governance.⁸

Such an institution of opposition is by large a modern concept and is a characteristic of democracy i.e. one may not find an organised opposition in other types of government like monarchical or dictatorial forms of government, it is on the other hand discouraged and viewed with contempt.

The concept finds its origin in the British system of parliamentary democracy even though it existed in some rudimentary form even in the earliest democratic states like Greece and Rome. It existed in the form of intercession rights which empowered the tribune of plebeians the right to veto. The modern concept began to take shape following the glorious revolution in 1688 when the parliament was established as the

³ E Spencer Wellhofer and Timothy M Hennessey, 'Political Party Development: Institutionalization, Leadership Recruitment, and Behavior' (1974) 18 *American Journal of Political Science* 135 <https://doi.org/10.2307/2110658>.

⁴ Devendra Kumar, 'Role of Opposition in a Parliamentary Democracy' (2014) 75(1) *IJPS* 165 <http://www.jstor.org/stable/24701093> accessed 15 July 2024.

⁵ Ibid.

⁶ Jeremy Waldron, *Political Political Theory: Essays on Institutions* (Harvard University Press 2016).

⁷ Ibid.

⁸ Ibid.

ruling power of England.⁹ The leader of opposition first emerged in the year 1807 when Lord Granville became the inaugural holder of the post, for there to be a leader of opposition there is a prerequisite of sufficient cohesive opposition which was in this situation present. The phrase 'his majesty's opposition' was coined by John Cam Hobhouse in the year 1826 thus giving the office more credibility and popularity.¹⁰

Though the existence of the office through the practice of convention was since the year 1807, it was not till the year 1937 that it was statutorily recognised through the Ministers of the Crown Act 1937¹¹ where the provision relating to his salary was incorporated¹² along with the provision defining the meaning of the term Leader of opposition¹³. It also laid down the provision to decide who will hold the office if that is in doubt.¹⁴ Development of the post inspired many a democracy, mainly those of the commonwealth nation. In order to grasp the concept of Opposition in India, it is impertinent that a reference to constituent assembly be made to understand the background which will further help us in understanding the position of Leader of Opposition in India. We shall also delve into the role played by the Judiciary. In the end, we shall put forth some suggestions as to how to strengthen the opposition.

CONSTITUENT ASSEMBLY DEBATES

In India during the constituent assembly debates, there were demands for the post of Leader of Opposition to be statutory recognized by way of amendment to Article 86 of the draft constitution¹⁵ by incorporating the provision that would have empowered the leader of the opposition to be entitled to receive a salary payable to a minister without a portfolio. This proposal was moved by Z.H. Lari, a member of the United Provinces. According to him codification of the post of leader of the opposition would have four benefits-

1. It would promote parliamentary opposition which would in his view along with the rule of law and a strong press constitute a bulwark of democracy
2. Will provide statutory recognition to the institution of parliamentary opposition which had been tarnished as being seditious and by this clear up this misconception
3. Will create conditions that will bring the dead chamber (legislature) to being a lively legislature.
4. Will complete the edifice of parliamentary democracy which is being transplanted from the surroundings of England to Indian environments

⁹ 'Glorious Revolution' (Encyclopædia Britannica, 26 February 2024) <https://www.britannica.com/event/Glorious-Revolution> accessed 31 March 2024.

¹⁰ 'The Official Opposition' (Erskine May - UK Parliament) <https://erskinemay.parliament.uk/section/5986/the-official-opposition> accessed 1 April 2024.

¹¹ Jack M and May TE, *Erskine May: Parliamentary Practice* (LexisNexis 1120).

¹² Ministers of the Crown Act 1937, s 5.

¹³ Ministers of the Crown Act 1937, s 10(1).

¹⁴ Ministers of the Crown Act 1937, s 10(3).

¹⁵ Constituent Assembly Deb (20 May 1949). https://www.constitutionofindia.net/constitution_assembly_debates/volume/8/1949-05-20 accessed 15 July 2024.

T.T. Krishnamachari rejected such an amendment by emphasizing the point that there existed no opposition at the moment, and it cannot be said that by stipulating salary for the Leader of the opposition, parliamentary opposition can be created. He was also of the view that the position of Leader of the opposition has in England been developed over the years and it should also develop in India before any legislation is done over the matter.¹⁶

He found support from Ayyangar who argued that the language of the draft article was wide enough to incorporate a provision for a salary of the leader of the opposition at a later date. Furthermore, he opined that there is no similar provision in any Act, in any Constitution in any part of the world saying that you must make provision for the Leader of the Opposition in the body of the Constitution itself. He also raised the question of what would happen if the government later removed the post of minister without portfolio. He went on that in the 2 years that the assembly was in session no healthy opposition existed, there were only some keen debates regarding the issue of Hyderabad. He also expressed apprehension that if the opposition party in question is of communal or socialist or communist nature, should they pander to them while they continue to destroy the nation through their politics. In the end, he summed up by stating that there is no opposition with a better manifesto than Congress.¹⁷

Kazi Syed Karimuddin supported the amendment stating that in India “we find that opposition is not tolerated, it is neglected and generally it is punished, the Constitution must create a Statutory Opposition. There is no democracy in the world that can function efficiently without opposition. The mistakes and failures of the Party have to be pointed out by the Opposition and the party in power has to be vigilant because the Opposition is not tolerated and is treated with scant courtesy. if it is to be left to the party in power to decide what is healthy criticism, and what is unhealthy criticism, then, in my opinion, every criticism of the party in power will be treated as unhealthy, and every opposition against the party in power will be treated with scant courtesy.”¹⁸ In the end, the amendment was rejected and Article 86 of the draft constitution was incorporated into the Indian Constitution unamended in the form of Article 106.¹⁹ Now we shall turn our attention towards the status of opposition in the current era.

SITUATION OF OPPOSITION RIGHTS IN INDIA

A. STATUTORY PROVISIONS

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ The Constitution of India 1950, art 106.

As discussed earlier, the constituent assembly rejected the appeal to statutorily recognize the Leader of the Opposition at that point in time instead leaving the matters in the hands of the legislature to formulate rules, and act as and when they deem fit. The first such recognition to the opposition was first awarded by the first speaker of the Lok Sabha when Directions 120 and 121 were issued by him under rule 389 of “Rules of Procedure and Conduct of Business in the House of People” in the year 1956.²⁰

Direction 120²¹ is related to the “recognition of association of members as a Parliamentary Party or Group” for the purpose of the business of the house. It also laid down that such a decision for recognition solely rests with the speaker and his decision is final.

Direction 121²² laid down various conditions that are to be considered by the speaker when awarding recognition such as that the association of members shall at the time of election have had a distinct ideology and programme and that they shall also have an organisation both inside and outside the House.

The most important of this direction was that it required that the party demanding to be recognized as the opposition must have at least equal strength to the quorum fixed ie. Is one-tenth of the total number of members of the house. The Quorum as it currently stands requires a party to have at least 55 members. This has been followed in India almost religiously as till 1969 there was no Leader of opposition in India and such was also the case in the 5th, 7th, 8th, 16th and 17th Lok Sabha.²³

The post of Leader of Opposition was given statutory recognition in the year 1977 when the Parliament enacted Salary and Allowances of Leader of Opposition Act²⁴. The Act defines the position as “being the Leader in that House of the party in opposition to the Government having the greatest numerical strength in the respective Houses.” Further, explaining that in case of a deadlock where more than 1 party is in opposition and has the same numerical strength, any one of the leaders can be regarded as the Leader of Opposition by the speaker and here to like the directions issued the decision of speaker will be final and conclusive.²⁵

An interesting point to be noted here is that the definition as provided under this act does not necessitate a quorum or one-tenth of the members of the House and only talks about the opposition party having the “greatest numerical strength” in the House. This has become a point of contention as to which criterion is to be followed.

There has not been a supreme court decision on the matter but a reference to Karpoori Thakur vs State Of Bihar can shed some light on the matter, in this case, the petitioner’s party had 42 seats which was above

²⁰ Rules of Procedure and Conduct of Business in the House of the People 1952, r 389.

²¹ Lok Sabha Secretariat, Directions by the Speaker of Lok Sabha, Parliament of India (Lok Sabha) (Apr 2019) <http://oksabhaph.nic.in/direction/direction.pdf> accessed 15 July 2024.

²² Ibid.

²³ NI Centre, ‘Leader of Opposition’ (Digital Sansad) <https://sansad.in/rs/about/leader-of-opposition> accessed 31 March 2024.

²⁴ Salary and Allowances of Leader of Opposition Act 1977.

²⁵ Ibid.

the 10% mark in the Vidhan Sabha and as such the petitioner's party was recognized as the Leader of Opposition. Later there was a split in the party and it was left with only 31 seats which was less than the 10% mark in the assembly and they lost their status as Leader of Opposition. They moved to court demanding to be recognised as they remained the largest party in opposition. Patna High Court held that the Speaker's decision was not based on anything mentioned in the Act but based on established practice. Since the established practice was followed, there was no question of any illegality or unconstitutionality.²⁶

In another case *AK Subbaiah v Karnataka Legislature Secretariat*, the court dismissed a petition questioning the appointment of the Leader of the Opposition despite not having 10% seats opining that the decision of the speaker is final in recognizing the Leader of the Opposition.²⁷ Only one thing can be ascertained from these decisions the role of the speaker in appointing of Leader of the Opposition is supreme and essential.

The Leader of Opposition in India apart from playing an imminent role in parliamentary democracy has also been made a member of the panel of various bodies that make appointments to various statutory bodies like the Central Vigilance Commission, Chief Information Commissioner, National Human Rights Commission and Lokpal and Lokayukta. Out of which selection committee of the Central Vigilance Commission²⁸, the Chief Information Commissioner²⁹ allows the leader of the largest party or group in opposition will be made a member of the selection committee if no Leader of the Opposition is recognized in Lok Sabha. The situation becomes even more tricky when considering the provision for selection committees for NHRC³⁰ and Lokpal and Lokayukta³¹ which does not provide for any exception to the Leader of Opposition and further states that no want of vacancy in the selection committee will invalidate the selection. This further muddies the water as the government can easily appoint any person to such bodies whose functions are of immense importance as no official say of opposition can be present in such.

B. SUPPRESSION OF MINORITY VOICES IN THE CURRENT REGIME

The current regime has built a rightful reputation for suppressing dissenting voices and indulging in the destruction of opposition. The government recently suspended 146 MPs belonging to parties in opposition in December 2023 in a span of just 8 days. Their offence was just that they refused to budge on their demand for a statement from the Union Minister on the matter regarding the security breach of the Parliament which had occurred earlier. The opposition was within their rights to seek at least a reply from

²⁶ *Karpuri Thakur v State of Bihar*, (1983) 1 SCC 438.

²⁷ *AK Subbaiah v Karnataka Legislature Secretariat* 1993(1)KARLJ638.

²⁸ Central Vigilance Commission Act 2003, s 4.

²⁹ Right to Information Act 2005, s 12(3).

³⁰ Human Rights Protection Act 1993, s 4.

³¹ Lokpal and Lokayukta Act 2013, s 4.

the Home Minister. The issue was after all of national importance. Not only the suspensions but the government also passed some key legislation without facing virtually any opposition during the mass suspension period. Such as the Indian Penal Code, Code of Criminal Procedure and the Indian Evidence Act; the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Bill, Telecommunication Bill and Press and Registration of Books Act. All these bills are of significant importance and have far-reaching effects on citizens' lives, Passage of these with the absence of opposition is ethically wrong and a scam on Constitution.

Another instance is of passing of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 ("Aadhar Act") could have been legitimately passed as a money bill, where the government to circumvent the opposition it might have faced in the Upper House introduced the Bill as a money bill as the Rajya Sabha does not have the power to veto money bill passed by the lower house, it can recommend changes and in absence of that it, the bill is deemed passed after 14 days.³²

JUDICIAL APPROACH IN SAFEGUARDING OPPOSITION RIGHTS

Opposition rights have been trampled by the ruling party in numerous different ways. It would be completely wrong to consider it a gross violation of the Constitution as the Constitution itself does not have enough safeguards to protect its basic ethos.

The judiciary has time and again come up to take moral responsibility to protect constitutional principles. But it had also many times failed in its duty. Through this section, we are trying to show the response of the judiciary vis-à-vis protecting the rights of opposition parties.

A. SUSPENSION OF MEMBERS OF THE HOUSE/ LEGISLATORS

Suspension from the House is considered a disciplinary measure against the member of the House who either disregards the Chair or in any way disrupts the business of the House. The ruling party is in part responsible for this as it with the help of the speaker, tries to stifle debate and discussion on the floor house. It also completely disregards opposition demands. This can aptly be understood from the fact that in the 2023 winter session of Parliament, none of the bills were referred to a standing committee³³. As a result of that opposition to make their voice heard, has no other option except to disrupt the proceeding of the house. Disruption helps in bringing those public issues that the ruling party in power tries to skirt away from.

Maharashtra Legislative Assembly through its resolution dated 05.07.2021, suspended 12 Members of Legislative Assembly ("MLA") of the opposition party for a period of 1 year in relation to "indiscipline and unbecoming behaviour resulting in maligning the dignity of the House". Respondent came up with the argument that the Supreme Court ("SC") lacks authority to interfere because of the specific bar in Article

³² The Constitution of India 1950, article 117.

³³ Winter Session 2023 <<https://prsindia.org/sessiontrack/winter-session-2023/bill-legislation>> accessed on 11th July 2024.

212³⁴. The SC went through a catena of its previous judgements to come up with the already proven fact that the court can interfere in the proceedings of Parliament that are tainted by substantive or gross illegality³⁵. In the case of *Raja Ram Pal v The Hon'ble Speaker, Lok Sabha & Ors*³⁶, SC concluded that the ouster clause does ouster court authority to review decisions but not in excess of illegality, violation of constitutional mandate, malafide, and violation of the principle of natural justice. Further, in the case of *Amrinder Singh v Special Committee, Punjab Vidhan Sabha & Others*³⁷, it was observed that the Constitution doesn't does not provide unfettered powers to any of the organs of the government. The court in this case held that the resolution was completely irrational to extend suspension beyond the remaining sitting of the current session. Recently in the case of *Raghav Chadha v Rajya Sabha Secretariat and Ors*³⁸, the court deplored the indefinite suspension of an MP and its cascading impact on his/her constituency.

B. MISUSE USE OF ANTI-DEFECTION

Anti-defection was introduced by Parliament as a safeguard measure to curtail the evil practice of “political defection”. It is the speaker who decides upon the disqualification of a member under anti-defection. Therefore, it is of utmost importance for him to remain impartial and free from any bias. Though the same is not mentioned in the Constitution but it is a part of the constitutional convention³⁹.

In the case of *Kihoto Hollohan v Zachillhu And Others*⁴⁰, two main contentions from Petitioner were that the speaker was part of the ruling party being given the power to decide for disqualification and the second was the finality of the speaker's decision.

The majority claim that it would be wrong to put such aspersions on the chair and some faith should be reposed on the authority of the speaker. But the minority cast its doubts and rightly did so. The minority opinion was based on constitutional assembly debates regarding Articles 102⁴¹, 103⁴² and 192⁴³ which relate to the disqualification of members. It was argued during the process of drafting that power under Articles 103⁴⁴ and 192⁴⁵ should be given to the Speaker but the power was ultimately reposed in the hands of the President and Governor in the case of Parliament and House of Legislature respectively⁴⁶.

With regard to the second contention, the court came up to the conclusion with the help of its previous

³⁴ The Constitution of India 1950, art 212.

³⁵ Ashish Shelar v. Maharashtra Legislative Assembly, (2021) SCC OnLine SC 3152.

³⁶ Raja Ram Pal vs The Hon'ble Speaker, Lok Sabha & Ors, (2007) 3 SCC 184.

³⁷ Amrinder Singh v Special Committee, Punjab Vidhan Sabha & Others (2010) 6 SCC 113 (5-Judge Bench) (paras 47,62,64 and 65)).

³⁸ Raghav Chadha v. Rajya Sabha Secretariat And Ors. W.P.(C) No. 1155/2023.

³⁹ Harsimran Kalra, 'Decisional Analysis and the Role of the Speaker' (2013) 1 The Hindu Centre for Politics and Public Policy accessed 28th March 2024.

⁴⁰ Kihoto Hollohan v. Zachillhu And Others [1992] SCR (1) 686.

⁴¹ The Constitution of India 1950, article 102.

⁴² The Constitution of India 1950, article 103.

⁴³ The Constitution of India 1950, article 192.

⁴⁴ Ministers of the Crown Act 1937, s 10(1).

⁴⁵ Ministers of the Crown Act 1937, s 10(3).

⁴⁶ Kihoto Hollohan v. Zachillhu and Others [1992] SCR (1) 686.

judgments in *Indira Nehru Gandhi v. Shri Raj Narain*⁴⁷ and *Brundaban Nayak v. Election Commission Of India*⁴⁸ that finality clause doesn't bar judicial scrutiny. But it created a loophole in the form that the question of judicial review will come into the picture only after the Speaker's decision in the disqualification matter. This allowed the Speaker to delay its decision in the matter of disqualification proceeding. Recently, in the case of *Jayant Patil vs. Speaker, Maharashtra Legislative Assembly* the SC directed the Speaker to quickly decide in the matter of disqualification proceedings. It took the Speaker more than 6 months to give its decision.

Over time, through judicial pronouncements, SC has tried to solve this issue. With the joint reading of *Kihoto Hollohan v. Zachillhu And Others*⁴⁹ and *Rajendra Singh Rana and Ors v. Swami Prasad Maurya and Ors*⁵⁰, in the case of *Keisham Meghachandra Singh v. Hon'ble Speaker Manipur Legislative Assembly and Others*⁵¹ judicial review can even be done before the Speaker decision. The court also made some recommendations regarding setting up special tribunals which would be headed by retired Chief Justice.

C. SPEAKER CLASSIFICATION OF BILL

Different kinds of bills are defined by Articles 107-117 of the Constitution.

1. General Bill (Article 107)⁵²
2. Money Bill (Article 110)⁵³
3. Appropriation Bill (Article 114)⁵⁴
4. Financial Bill (Article 117)⁵⁵

Article 198⁵⁶ relating to the state legislature is analogous to Article 110.

In the case of *Saeed Siddiqui vs State of Uttar Pradesh*⁵⁷, the SC upheld the Speaker's certification of the bill amending law related to Lokayukta as a money bill. It concluded that the Speaker's certification of the bill is final and binding. This allowed the State Government to make Legislative Council recommendations nugatory.

Article 110⁵⁸ lists out 6 provisions and a bill can only be classified as a Money Bill should it have only these provisions along with a few other incidental provisions. In the year 2016, the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 ("Aadhaar Act")⁵⁹ was introduced as a

⁴⁷ *Indira Nehru Gandhi v. Shri Raj Narain* [1976] 2 SCR 347.

⁴⁸ *Brundaban Nayak v. Election Commission of India* [1965] 3 SCR 53.

⁴⁹ *Kihoto Hollohan v. Zachillhu and Others* [1992] SCR (1) 686.

⁵⁰ *Rajendra Singh Rana and Ors v. Swami Prasad Maurya and Ors* (2007) 4 SCC 270.

⁵¹ *Keisham Meghachandra Singh v. Hon'ble Speaker Manipur Legislative Assembly and Others* 2020 SCC OnLine SC 55.

⁵² The Constitution of India 1950, article 107.

⁵³ Article 110 of the Constitution of India 1950.

⁵⁴ The Constitution of India 1950, article 110.

⁵⁵ The Constitution of India 1950, article 117.

⁵⁶ The Constitution of India 1950, article 198

⁵⁷ *Mohd. Saeed Siddiqui v. State of U.P.*, (2014) 11 SCC 415.

⁵⁸ Salary and Allowances of Leader of Opposition Act 1977.

⁵⁹ Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 ("Aadhaar Act").

Money Bill. It contained 59 sections out of which only section 7 referred to the Consolidated Fund of India and makes Aadhar mandatory only when the source of expenditure is the Consolidated Fund of India.

In the case of *Justice K.S. Puttaswamy v Union of India*⁶⁰, Aadhar Act as Money Bill was upheld with a ratio of 4:1 with present Chief Justice D.Y. Chandrachud writing a dissenting judgement. The majority grossly failed to address the term “only” in Article 110 and its implications have completely been sidelined. It tries to uphold the act as a social welfare measure targeted towards the delivery of public goods to the poor.

However, the majority in the case upheld the court’s right to scrutinize the Speaker’s classification of a bill as a Money bill. Therefore, summarily removing the bar created in Article 110(3)⁶¹ but on the other hand, its basis for judicially reviewing the act was completely flawed. This would further reduce the role of Raj Sabha in keeping an effective check on majoritarianism.

D. MISUSE OF THE GOVERNOR’S POWERS BY WITHHOLDING ASSENT TO BILLS

Recently, the State of Kerala has filed a writ petition under Article 32 of the Constitution against the President for withholding assent to four out of seven bills reserved by the Governor⁶². They contended that it is wrong on the part of the Governor to keep the bills pending for more than 24 months. This is not an isolated incident, in the last six months Punjab⁶³ and Tamil Nadu in the case of *The State of Tamil Nadu v Governor of Tamil Nadu*⁶⁴ have also filed cases in SC over the issue of pending bills.

Article 200⁶⁵ comes into play when a bill is passed by the legislature and is presented to the Governor for their assent. In this case, the Governor has three options at his disposal to assent, withhold or reserve the bill for the President's consideration. If the Governor wants to make legislature some changes, in the case of a non-money bill, the bill needs to be sent back to the Assembly as soon as it reaches for assent. If the Assembly return the bills with or without any modifications, the Governor has no other option but to give his assent. For the bill to be reserved for the President's consideration, it can only be done if it in the opinion of the Governor derogates the power of the High Court (“HC”).

There are grey areas in two aspects – What happens if the bills are sent back to the President after it is reconsidered? And for how many days can the governor keep the bill before sending it for Presidential consideration? The Court in the case of *Purshothaman v State of Kerala*⁶⁶, held that the phrase “as soon as possible” in Article 200 is limited only to return the bill.

⁶⁰ Retired. Justice K.S. Puttaswamy v Union of India AIR 2017 SC 4161.

⁶¹ The Constitution of India 1950, article 110(3).

⁶² Kerala government moves SC against President, governor over pending bills<<https://indianexpress.com/article/india/kerala-govt-sc-president-withholding-assent-bills-9230205/>> accessed on 31st March 2024.

⁶³ As Punjab govt moves Supreme Court over pending Bills, Governor Purohit says ready to examine them <<https://indianexpress.com/article/cities/chandigarh/punjab-govt-moves-sc-pending-bills-9004805/>> accessed on 31st March 2024

⁶⁴State of Tamil Nadu v. Governor of Tamil Nadu, Writ Petition(s)(Civil) No(s). 1239/2023

⁶⁵ The Constitution of India 1950, article 110.

⁶⁶ Purshothaman v State of Kerala 1962 AIR 694.

In the case of *The State of Tamil Nadu v Governor of Tamil Nadu*⁶⁷, the Governor tried an artificial difference between returning of bill and withholding assent. SC concluded that if the Governor is withholding his assent to the bill, there is no other option except to send it back to the legislature for reconsideration. The absence of such an express provision causes confusion regarding the next step after the Governor withholds assent to the bill. The SC took strong note of the fact that it was only when the case was filed, that the Governor withheld his assent to bills after keeping it pending for 34 months. Moreover, the fact that the constitution does not provide a timeline in Articles 200 and 201, has made it a source of abuse by the ruling party in the Centre. This has also created a sense of deep distrust among states against the Centre.

WHO IS THE LEADER OF OPPOSITION?

After 10 years Lok Sabhas would finally have a Leader of Opposition as Rahul Gandhi assumed the role⁶⁸. According to Section 2 of The Salary and Allowances of Leaders of Opposition in Parliament Act, 1977, the leader of the largest opposition party in terms of numerical strength and recognised by the Chairman of the Council of States or Speaker of the House, as the case may be. But from the last ten no one recognised as Leader of Opposition in the Parliament. The reason often cited to justify this action is that the party claiming the post does not have the requisite number of 10% of the total number of seats either in Lok Sabha or Raj Sabha, as the case may be but no such rule is mentioned in any statute. In the 1950s, a practice was started by the speaker to recognise the parliamentary parties as 'parties' or 'groups'. This was for ensuring the proper allotments of seats in the house, time duration allotted in a debate etc. This rule somehow transposed in an erroneous belief that a parliamentary party having more than 10% of the seats can lay their claim for the position of Leader of the Opposition⁶⁹. This rule is a complete violation of the statutory norms by the speaker of the house.

PRACTICES FOLLOWED IN OTHER COUNTRIES

In many Westminster-model democracies, there is a concept of "shadow cabinet" which was developed in the United Kingdom around the 19th century. It can be understood as the counterpart of the Government but constituted of members of the largest opposition party. Just as the government is constituted of different ministries, similarly members of the shadow cabinet hold specific responsibilities. In the United Kingdom, for example, the health secretary (minister of health) will be shadowed by a shadow health secretary, generally a senior parliamentarian from the largest opposition party. Similarly, in Canada, for example

⁶⁷ State of Tamil Nadu v. Governor of Tamil Nadu, Writ Petition(s)(Civil) No(s). 1239/2023.

⁶⁸ The Hindu, 'Opposition's larger demography, Leader of the Opposition's big responsibility' (The Hindu, 15 January 2024) <https://www.thehindu.com/opinion/lead/oppositions-larger-demography-lops-big-responsibility/article68337114.ece> accessed 15 July 2024.

⁶⁹ The Wire, 'Leader of Opposition in Parliament: Why It Matters and Why We Need It' (The Wire, n.d.) <https://thewire.in/government/leader-of-opposition-parliament-lok-sabha> accessed 15 July 2024.

health secretary is shadowed by the health critic which scrutinizes government action concerning policies regarding the health of the populace of the country. Their duties are not limited to criticising or scrutinising the government's action but also act as government-in-waiting.

Opposition parties in the United Kingdom are allotted "opposition days". Under Common Standing Order No. 14, it is 20 days in each parliamentary season, in which they choose the topic of business and table motions. Out of these 20 days, 17 days are allotted to the official opposition party, and the remaining three go to other small opposition parties. In 2020, the Labour Party, which was the official opposition, introduced a motion to extend free meals that were provided in schools. Though this proposition was initially rejected later government reversed its action.

A convention like the leader of official opposition heading the Public Accounts Committee ("PAC") which was developed in the United Kingdom was also adopted by India in 1967⁷⁰. The PAC evaluates public spending to ensure value for money by assessing its economy, efficiency, and effectiveness and holds the government and its civil servants accountable for delivering public services⁷¹. This practice is followed in other Westminster-model democracies like Trinidad and Tobago⁷². A similar arrangement is in place in Tunisia.

RECENT RESURGENCE OF OPPOSITION IN INDIA

Opposition parties in India were written as too feeble to even provide serious competition to the ruling party Bhartiya Janta Party in the run-up to the general election to the 18th Lok Sabha. But the election result showed a completely different picture with the opposition party's alliance Indian National Developmental Inclusive Alliance (I.N.D.I.A.), a multi-party coalition, secured 232 seats while the ruling National Democratic Alliance (NDA), which includes Bhartiya Janta Party, won 293 seats⁷³. In the run-up to the election, opposition leaders and parties faced a slew of legal and financial challenges. This came on the face when Arvind Kejriwal, Chief Minister of Delhi and Hemant Soren, Chief Minister of Jharkhand were lodged in jail on charges of corruption.⁷⁴

CONCLUSION

Recently, the Indian National Congress, the largest opposition party, got a tax notice amounting to Rs 3,567

⁷⁰ Lok Sabha Secretariat, 'Introduction to the Public Accounts Committee' (Lok Sabha Secretariat, n.d.) <https://loksabhadocs.nic.in/LSSCOMMITTEE/Public%20Accounts/Introduction/intro.pdf> accessed 15 July 2024.

⁷¹ Parliament UK, 'Role of the Public Accounts Committee' (Parliament UK, n.d.) <https://committees.parliament.uk/committee/127/public-accounts-committee/role/> accessed 15 July 2024.

⁷² Constitution of Trinidad and Tobago, c 1, s 119.

⁷³ The Indian Express, 'Explained: Why 'Alliance of Parties' Is the New Buzz in Indian Politics' (The Indian Express, n.d.) <https://indianexpress.com/article/explained/explained-politics/explained-india-alliance-parties-9376525/> accessed 15 July 2024.

⁷⁴ Associated Press, 'India's Opposition Sees Hope in Modi's Falling Popularity' (Associated Press, n.d.) <https://apnews.com/article/india-election-opposition-modi-0fdadcf9aaa0d80072c3f15b6759969c> accessed 15 July 2024.

crore just 20 days before the 2024 Lok Sabha elections⁷⁵. This is not an isolated incident but a chain of events that the present ruling dispensation is employing to coerce opposition parties to toe the line ruling coalition.

In our opinion, it is not possible to have every provision that can structurally strengthen our opposition. We also have to repose faith in our political leaders as Ambekar rightly highlighted that even a good constitution can be ineffective if those responsible for implementing it are bad. But still, there are certain ways to ensure that the opposition can fulfil its task to ensure the government's accountability towards the public at large.

Indian parliamentary model is largely based on the British parliamentary system. Therefore, we can adopt certain practices that would suit our Indian System as suggested in the previous section. The concept of Shadow Cabinet is also known as "His Majesty's Official Opposition". It provides a sense of responsibility and official recognition to the opposition. It helps them to efficiently discharge their function to scrutinize government policies and to act as people's spokespersons. It also helps the government to keep the opposition party in the loop before taking any decision of national importance. This could be understood as before imposing the lockdown UK's PM Boris Johnson consulted Leader of His Majesty Official Opposition Keir Starmer who is also the leader of the Labour Party.

Therefore, there is no doubt that the opposition is not structurally weak. Its weakness lies not only concerning one or two areas but as a whole. Moreover, the main question arises why would a ruling dispensation, which is very sure of getting elected in the next election, would attempt to strengthen the opposition? As has already been mentioned above, it is not the Constitution that is good or bad, it is those whom we elect for its implementation turn it good or bad.

⁷⁵ Congress gets tax notices for three more years, total I-T demand Rs 3,567 crore <<https://indianexpress.com/article/india/congress-gets-tax-notices-for-three-more-years-total-i-t-demand-rs-3567-cr-9242515/>> accessed on 14th July 2024.