Research Note
on

Post Legislative Scrutiny (PLS) – A Dimension of the Oversight Function of Parliament.

Research and Information Division of Lok Sabha Secretariat

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At a Glance

- Post-Legislative Scrutiny includes two main dimensions: evaluating the introduction and enforcement of a piece of legislation; and evaluating the impact of legislation.

- While Post-Legislative Scrutiny can be instrumental in building effective relations between parliamentary committees and ministries, it also aims to make the Executive more accountable before Parliament for law implementation.

- Parliamentary Committees have come to play a major role as a means for oversight over the Executive by the Parliament to ensure accountability and transparency in the administration.

- Parliaments and other actors involved in the adoption and implementation of laws, including the Executive, the Judiciary, civil society, independent oversight institutions, contribute to the quality and effectiveness of legislation and its implementation.

Introduction

Accountability of the Executive to Parliament is one of the cardinal principles of a parliamentary democracy. Accountability involves rendering an account of one’s actions. Public accountability is an assertion that all authority is derived from the public and that those who are entrusted with the authority must be made to realise that for their allotted tasks, they have to perform and produce results. Indeed, there can be no democratic system of government without transparency and accountability. Of the three broad distinctive functions of the Parliament in a parliamentary democracy -- that of legislation, budget approval and oversight of the Executive -- the oversight function is perhaps the most dynamic and challenging as it is a continuous process. It is through this oversight function that Parliament holds the government to account on behalf of the people, ensuring that government policy and action are both efficient and commensurate with the needs of the public.

As Parliament is responsible for enacting legislations, it has a role in monitoring implementation of legislation and evaluating whether the laws it has passed, have achieved their intended outcomes. As implementation is a complex task which does not happen automatically, Parliament has a role to monitor the implementation of legislation. The act of evaluating laws that Parliament has passed is known as Post Legislative Scrutiny.

What is Post-Legislative Scrutiny (PLS)?:
It is the role of Parliament to oversee, monitor and evaluate to what extent the government has implemented the legislation and how successful it is. Therefore, Post-Legislative Scrutiny (PLS) is an important tool for ensuring government accountability.

| PLS is a broad concept, which consists of two dimensions. **Firstly**, PLS looks at the enactment of the law, whether the legal provisions of the law have been brought into force, if secondary legislation has been enacted, and how courts have interpreted the law. **Secondly**, PLS looks at the impact of legislation, whether the intended policy objectives of the law have been met and how effectively. |

**Role of Parliament and PLS:**

Parliament may consider three binding instruments to fortify its ability to carry out PLS:

- a ministerial undertaking,
- review clauses in legislation or
- sunset clauses\(^1\).

However, while such binding requirement is useful, it is not necessary.

Also in cases when no early commitment to PLS is made during the passage of the bill, Parliament has a primary responsibility to oversee the implementation of legislation. It is then the responsibility of Parliament to identify when it will trigger PLS, such as for instance issues raised by MPs on the floor of the Parliament, regular committee work, requests by citizens and organizations through petitions, media reports highlighting problems with specific laws and judicial review.

In this context, the following points are of significance:

- **Parliament needs to carefully identify the pieces of legislation that are selected for reviewing their implementation.** It is also useful to review secondary or delegated legislation at the same time as reviewing the primary act. When analyzing the impact of legislation, one needs to consider the cumulative effect of legislation, as legislative impact is rarely the effect of one single law.

- While it is hard to establish a general timeframe for PLS, a too early review runs the risk that there is insufficient evidence for a mature judgment on the impact of legislation. Some legislation does take time to come into effect, because different parts of the law might have different commencement dates.

- **PLS provides an opportunity to assess the impact of legislation on issues which cut across different Acts, such as gender equality or rights of minorities.** As legislation

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\(^1\) A provision of a law that will automatically be terminated after a fixed period unless it is extended by another Legislation/Amendment/Law.
frequently affects men and women differently, systematic analysis and evaluation of law and policy, based on how they impact women, men and other relevant demographic groups can help to identify and avert or redress any potential disadvantages they may create.

To do a gender analysis of the impact of legislation, there is need for the collection of evidence, with sex-disaggregated data or qualitative assessments of government services.

- For Post-Legislative Scrutiny to be as effective as possible, access to government-held information is vital. If such framework between government and Parliament is not in place, Parliament itself needs to take the initiative to collect relevant information and secure access to governmental information. Parliament can request government to submit information, answers to questions, etc. In addition, a performance audit by the Auditor General’s Office can also be a useful source of information.

- Public engagement in PLS enables access to additional sources of information, increases the credibility of findings and enhances public trust in democratic institutions. The results of the PLS inquiries, e.g. the PLS Committee report, need to be publicly accessible, if possible using open data and document standards.

Position in India

The Constitution of India, republican in character and federal in structure, embodies the salient features of the parliamentary system. While the Parliament’s main role is to enact laws and ensure the accountability of the Executive, the main function of the Executive is to govern and implement the laws passed by the Parliament. The Judiciary interprets the Constitution and laws and acts as the guardian of citizens’ rights.

In India, as in most other democratic countries, the primary initiative in formulating legislative and financial proposals rests with the Executive, but it is the Parliament which exercises a decisive influence in giving them the shape of approved/sanctioned policies, legislations, revenues and expenditures. The Executive can give effect to only such policies and legislations with such revenue and expenditure which have the sanction of Parliament.

Oversight Role of Parliament: Ensuring Executive Accountability

- Parliamentary control over the Executive has several aspects.

  - It is aimed at ensuring that the Government of the day performs to the best of its ability for public welfare.

  - Parliamentary surveillance is essential to ensure that executive power is not misused or abused and to prevent mis-governance.
• The policies and programmes of the Executive are constantly subjected to parliamentary scrutiny.

• Quite a number of intricate procedures and processes have been evolved in the Parliament of India, under the Rules of Procedure and Conduct of Business as well as by conventions, with a view to ensuring greater accountability of the Executive.

• These parliamentary practices and procedures afford ample opportunities to the representatives of the people not only for making daily and periodic assessment of the Executive but also to constructively review the Post-legislative effects.

• This results in helping Government to tune their policies, programmes and actions in accordance with the ever changing interests and concerns of the nation and the public. Such processes and procedures serve as important tools enabling the members to voice the grievances of the people; to draw the attention of the Government to matters/developments of crucial importance; to obtain decisions of and elicit information from the Executive on a variety of matters affecting the public; and to ensure expeditious solutions to varied problems and grievances.

Some of the procedural devices and initiatives and their usefulness particularly in ensuring greater executive accountability are: Motion of Thanks on the Address by the President, Parliamentary Questions, Half-an-Hour Discussion, Calling Attention, Matters under Rule 377, Short Duration Discussions, Zero Hour, Adjournment Motion, No-Confidence Motion, Motion of Confidence, etc.

The Committee System: Strengthening Parliament’s Oversight role

In India, Parliamentary Committees has emerged as a great facilitator for detailed and fuller examination of matters and a close and continuous check on governmental activities including the questions of technical nature.

The way in which the committee structure has evolved in the Indian Parliament is also different than in many others. Rather than each House having its own complete committee structure, most of the Standing Committee structure in India is shared. It spreads the workload and promotes understanding and collegiality between members of both houses.

Among the Standing Committees, in our Legislatures, the three Financial Committees – Committees on Estimates, Public Accounts and Public Undertakings – constitute a distinct group as they keep an unremitting vigil over the Government spending and performance.

Apart from the three Committees, the setting up of the Departmentally Related Standing Committees (DRSCs) in 1993 is a landmark development in securing Executive
accountability covering the entire spectrum of administrative activities. Now, there is a full- 
fledged system of 24 Departmentally Related Standing Committees, each consisting of 31 
members of Parliament, 21 from Lok Sabha and 10 from Rajya Sabha. The functions of these 
Committees broadly include consideration of the Demands for Grants; examination of Bills 
referred to them; consideration of Annual Reports, etc.

In order to fix responsibility, Hon’ble Speaker of Lok Sabha has issued Direction 73A, 
which *inter alia* provides that the Minister concerned shall make, *once in six months*, a 
*Statement* in the House regarding the status of implementation of recommendations 
contained in the Reports of the DRSCs of Lok Sabha with regard to his/her Ministry. 
The *Direction is a procedural innovation* as it infuses accountability at the highest level 
of the Government towards timely implementation of important recommendations of 
DRSCs.

The Committees of Parliament, while exercising oversight over the Executive, have 
successfully pointed out various inadequacies in the system which required suitable toning up. 
Keeping in view all these deficiencies, the Committees have given their considered opinion in 
the form of recommendations to ensure economic efficiency and speedy execution of the 
legislations, policies and programmes. The Government has been according importance and due 
consideration to these recommendations and has endeavoured to implement them in letter and 
spirit to realise the objective of *good governance* through constructive cooperation between the 
Executive and the Legislature. In all their endeavours, the Parliamentary Committees have not 
been looking at the Executive as an adversary, but as a partner in nation-building and as a co-
player in the arduous task to achieve the laudable goals set forth in our Constitution to ameliorate 
the lot of our teeming millions.

**Other Standing Committees**

Among other important Standing Committees in each House, particularly from the point 
of view of Parliament’s oversight role, are the *Business Advisory Committee, the Committee 
on Government Assurances, the Committee on Subordinate Legislation* and the *Committee 
on Papers Laid on the Table of the House*. Working over the years, they have emerged as 
*potent instruments in ensuring greater administrative accountability to the Parliament.*

- The *Business Advisory Committee*, Hon’ble Speaker as Chairman and with representative 
of political parties, recommends the allocation of time for all items of Government 
business to be brought before the House, which on approval, takes effect as an Order of
the House. The Committee on its own initiative has sometimes suggested important subjects for discussion in the House.

- The Committee on Subordinate Legislation scrutinises and reports whether the powers to make regulations, rules, sub-rules, bye-laws, etc. conferred by the Constitution and/or delegated by the Parliament are being properly exercised by the Executive within the scope of such delegation. To see that the power is being exercised in conformity with the authority given by the Principal law and is not in conflict with any of the provisions of parliamentary enactments.

- The Committee on Petitions of Lok Sabha not only looks into petitions on Bills and other matters pending before the House, but also entertains representations on other matters from the public in order that no grievance of a substantial nature goes unremedied.

Besides, Parliament may also constitute other committees, the commonest of which are the Select or Joint Committees on Bills. A number of ad hoc committees have been constituted from time to time either by the two Houses on a motion adopted in that behalf, or by the Speaker/Chairman to enquire into and report on specific subjects. To mention a few includes – The Insolvency and Bankruptcy Code, 2015; Bill to amend the Citizenship Act, 1955; The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015; the Committee on the Welfare of Scheduled Castes and Scheduled Tribes (1968); Joint Committee on Amendments to Election Law (1971); Joint Committee of the Houses to examine the question of the working of Dowry Prohibition Act, 1961 (1980); Joint Committee on the Constitution (Seventy-second Amendment) Bill, 1991; Joint Committee on the Constitution (Seventy-third Amendment) Bill, 1991; Select Committee on the Transplantation of Human Organs Bill, 1993; etc.

Strengthening Parliament’s Oversight role through Agencies

In India, there is no mandatory requirement for ex-post evaluation of laws. However, various steps have been taken in the direction of designing better laws such as making pre-legislative scrutiny of bills through public feedback and identifying laws that need to be repealed.

Mechanisms exist for undertaking review of laws.

- The Law Commission of India identifies laws that require amendments or repeal. In preparing its review of laws the Commission circulates its draft analysis amongst the public and invites comments. It organises seminars and workshops in different parts of
the country to elicit opinion on proposed strategies. The Commission is also empowered to take evidence.

- **The National Human Rights Commission was established to review legal safeguards to human rights.** It holds consultations with NGOs and experts on human rights issues.

- **The Administrative Reforms Commission was established to revamp the public administration system.** The Commission reviewed several laws and consulted various stakeholders in preparing its reports.

**Conclusion**

The parliamentary oversight function is one of the cornerstones of democracy. The robust monitoring of the Executive by the Parliament is an indicator of good governance. An effective mechanism of parliamentary oversight operated by dedicated and vigilant members through their active participation in various parliamentary debates and discussions is essential for ensuring greater administrative accountability to the Legislature. The need to strengthen various devices of parliamentary oversight to give greater meaning to the concept of administrative accountability is a continuing one. Legislative improvement remains, for the most part, a by-product of a Parliament’s legislative process. By reviewing government action or inaction, and by amending legislation of various kinds, Parliament takes measures of the extent to which the laws of a country are fit for purpose, as well as the extent to which the government is managing the effective implementation of its policies and abiding by statutory obligations.