

Private Member Bills : Implications on legislation and Representation

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Abstract

The tripartite division of power accords the law making business to the legislative part of the government. How much law making do individual members of Parliament actually participate in? What part does individual initiative play in legislation, how well do individual members actually represent their constituents, all these questions are analysed in this paper through the prism of private member bills.

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Introduction

Private Member refers to any member of the Parliament who is not a minister i.e. not part of the executive branch of the government. Bills introduced by these 'private members' are thus called private member bills. Though private members have shown considerable enthusiasm in introducing bills, only a handful end up becoming acts most are not even considered properly. What impact does this have on how our democracy works and how representation is translated into action in this representational democracy. Also important is the development of initiative and individuality on the part of legislators.

The traditional law making business of the eminent law making body of the country the Parliament has with time become more and more that of legitimization than that of legislation in the classical sense. The growing technicality of everyday law making has led to almost complete executive control of the initiation part of legislation. This is reflected in the dearth of private member bills - which have their origin outside the executive - reaching the stage of conclusion.

Government business has priority, this may satisfy convenience of governance but does not do justice to the principles of representation. Legislators are today bound by party loyalty and silenced by the Whip. Individuality and initiative on the part of individual legislator could be of great value in a country as large and diverse as India where an approach of one size fits all is hardly helpful. Post the 52nd Amendment Act of the constitution and the enactment of anti defection regulations it has become more and more difficult for an individual legislator to be anything more than a rubber stamp on the policies of his/her parties. This has contributed to unprecedented centralization.

It is clear that the mandate model of representation with its party heavy approach has triumphed over the Burkean Trusteeship model of representation which prized the individuality of the legislator and on Paine's delegate model of representation which placed great importance on faithful representation of the wishes of the constituents by the representative. Electors too now more and more elect parties rather than candidates.

This can be seen as what Raymond Aron described as the 'Government for the people' and not 'by the people'. Democracy rid of its popular participatory aspects promoted by Lippman and Schumpeter. Because the representatives of people the individual legislators today have very lesser power to influence the design or outcome of the laws actually passed

If the regulations related to private member bills are relaxed it will lead to

greater participation of individual legislators in the actual legislation and will lead to better input which will enhance the participatory aspect of democracy in India.

Business in parliament is divided into Government business and Private member business. Government business is published beforehand in Bulletin Part II and takes priority in every session. Private member's business is restricted to the last two and a half hours of a sitting on every Friday. Private member bill and private member resolutions are taken up by the Parliament every Friday alternatively beginning with the bills on the first Friday. Speaker may allot different Fridays for the disposal of different classes of such business and may decide the order of the precedence of the same, he/she may in consultation with the leader of the house allot any other day (other than a Friday) for such business. In the event of there being no sitting on a Friday the speaker may direct the specified period of any other time of any other day to take up the same business.

The Committee on Private Member's Bills and Resolution in the Lok Sabha plays the same role for Private Member Bills as the Business Advisory Committee does for Government Business. It consists of 15 members nominated by the Speaker with the Deputy Speaker as the chairman. It looks into various issues of the bill including legislative competence, time to be allotted. It also examines these bills and classifies them according to their nature, urgency and importance into two categories namely Category A and Category B. The Rajya Sabha however does not have any such committee and the same function is performed by the Business Advisory Committee of the Rajya Sabha.

A private member bill requires a notice of one month prior to introduction. Notice should be accompanied by

1. Copy of the bill.
2. Statement explaining its Objects and Reasons.
3. Application for President's recommendation (if it is required)
4. Financial memorandum of the estimate of expenditure if it involves expenditure from the Consolidated Fund of India.
5. Memorandum of proposal of delegated legislation if it requires such a proposal.

The primary responsibility of designing all of this lies with the individual member introducing the bill however they can rely on the secretarial staff of each house for technical assistance.

It is hardly surprising then that only 14 private member bills have been passed since the independence. Bills that have been passed are as follows.

1. The Muslim Wakfs Bill, 1952 introduced by Syed Mohammed Ahmed Kasmi in the Lok Sabha and passed in 1954.
2. The Code of Criminal Procedure (Amendment) Bill, 1953 introduced by Raghunath Singh in the Lok Sabha, the bill was passed in 1956.
3. The Indian Registration (Amendment) Bill, 1955: introduced by S.C. Samanta in the Lok Sabha and was passed in 1956.
4. The Proceedings of Legislature (Protection of Publication) Bill, 1956 introduced by Feroze Gandhi in the Lok Sabha, it was passed in 1956.
5. The Women's and Children's Institutions (Licensing) Bill, 1954 introduced by Rajmata Kamalendu Mati Shah in the Lok Sabha and passed in 1956.
6. The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Bill, 1954 introduced by Raghubir Singh in the Rajya Sabha
7. The Hindu Marriage (Amendment) Bill, 1956 introduced in the Rajya Sabha by Seeta Parmanand and passed in 1956.
8. The Code of Criminal Procedure (Amendment) Bill, 1957: It was introduced by Subhadra Joshi in the Lok Sabha and passed in 1960.
9. The Orphanages and Other Charitable Homes (Supervision and Control) Bill, 1960 introduced in the Rajya Sabha by Kailash Bihari Lall and passed in 1960.
10. The Marine Insurance Bill, 1959, introduced by M.P. Bhargava in the Rajya Sabha and passed in 1963.
11. The Hindu Marriage (Amendment) Bill, 1962, introduced in the Lok Sabha by Diwan Chand Sharma, passed in 1964.
12. The Salaries and Allowances of Members of Parliament (Amendment) Bill, 1964 introduced by Raghunath Singh in the Lok Sabha, passed in 1964.
13. The Indian Penal Code (Amendment) Bill, 1967, introduced by Diwan Chaman Lall in the Rajya Sabha and passed in 1969.
14. The Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Bill, 1968: Introduced in the Lok Sabha by Anand Narian Mullah, passed in 1970.

Recently the Rights of Transgender Persons Bill, 2014 introduced in the Rajya Sabha by Shri Tiruchi Siva was passed by the Upper House and as of now is pending before the Lok Sabha.

Therefore the last private members bill to make it was 47 seven years ago,

The ratio of the number of bills introduced to the number passed is very low, what is even more alarming is the ratio of the bills introduced to the number of bills which are discussed in the Parliament.

Such statistics are bound to create an attitude of apathy and cynicism on the part of the legislators and also on the part of their constituents as these legislators tasked with the responsibility of representing the interests of their constituents in the House are hamstrung by procedures and conventions are not able to truly bring the voice of their constituents to House. It is also rather ironic that in the house of legislature, the executive is the driving force of legislation.

Legislators on their part are not shy in introduction of private member bills. More than 1000 such bills have been introduced as of now in the 16th Lok Sabha, with Shri Nishikant Dubey of the BJP from the Godda constituency Jharkhand leading with the introduction of 29 bills so far.

Shri Shantaram Laxman Naik of the INC from the state of Goa leads in the Rajya Sabha with an introduction of 31 bills so far. But when we look at the statistics of the number of such bills passed in the recent years, no such bills have been fully enacted in the last 40 years, it is hard not to draw the conclusion that greater importance should be given to such bills as it will lead to a more robust, decentralized and far more representative governance for the people of India.

However in the country of origin of our model of governance, i.e. in the Parliament of Great Britain the instrument of Private Member Bill is an oft used instrument of representation and legislation. Under the Standing order 14(9) of the Parliament of United Kingdom private member bills have precedence over government business for thirteen Fridays in each session.

6 Private member bills have been passed in the 2015-2016 session of the Parliament. This shows a healthier outlook of the system as a whole towards legislation originating from outside the confines of official government wisdom and the respect for representative principles which modern democracies espouse.

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