

Westminster Model Shadow Cabinet in India: A Comparative Politico-legal Analysis of Indian and UK Scenario

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Abstract

Due to a single-party government with an overwhelming majority in the Indian parliament, several bills have been passed without much debate in the previous decade. Ministerial research quality has deteriorated, and there is no opposition party to discuss this as no party has the required number of seats. Recent bills, including the surrogacy bill, the RTI amendment, etc., were approved without much debate. Private members of parliament are rarely informed about the government's plans, resulting in absenteeism and frequent walkouts. The Prime Minister and his cabinet have undisputed authority over the legislature, whilst accusations of bias against the President and the apex court complicate the issue. This weakening of checks and balances has a negative impact on India's public governance system and Rule of Law and contradicts Dicey's idea of "predominance of legal spirit." Thus, there is a need to establish novel kinds of counterbalances, and several parliaments across the globe have proposed a solution: shadow cabinets. The current study analyses the socio-political development and constitutional efficiency of shadow cabinets in nations such as the United Kingdom. It also focuses on the procedural modifications required to execute these rules in India, and the reasons for its failure in Indian state governments. It suggests that shadow cabinets enhance performance efficiency, research quality, bill presentation frameworks, and agendas debated by cabinet ministers. Furthermore, it concludes that the system of checks and balances shall be revived, the Rule of Law be strengthened, and institutional morality internalized in the Indian parliament.

Keywords: Parliament, rule of law, shadow cabinets, westminster model

INTRODUCTION

Rule of Law in India

Rule of law refers to the belief that the supreme authority in a political state should not be a political or legal entity, but instead the law itself. It describes absence of arbitrary powers to government and adequate safeguards against misuse of discretionary powers of the executive as basic tenets of Rule of Law [1]. The legislative, executive, and judiciary are the 3 instruments of the state in

India who work independently and prevent one another from abusing the precepts of the rule of law through a system of checks and balances [2]. The Indian administrative system comprises of the legislature and the executive, which is primarily governed by a common set of representatives recognized as the cabinet of ministers [3]. The courts have suggested:

- Rule of law cannot be upheld in spirit and letter unless the instrumentalities of state do not perform their duties in a just & fair manner [4].

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Received Date: February 07, 2022
Accepted Date: April 21, 2022
Published Date: May 16, 2022

Citation: Sanyal Tayal. Westminster Model Shadow Cabinet in India: A Comparative Politico-legal Analysis of Indian and UK Scenario. Journal of Constitutional Law and Jurisprudence. 2022; 5(1): 1–7p.

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- Absence of arbitrary power is an essential upon which our entire constitution rests [5].
 - Law-making must be handled by a democratically elected legislature, and that such a legislature should not have unrestricted legislative power [6].

Indian Politico-legal Scenario

Since independence, India has had elections every 5 years to determine the leadership in parliament. After 1st Prime Minister's appointment for several years [7] vote shares were divided, and need for coalition governments developed. UPA (Congress coalition) and NDA (BJP coalition) became 2 major national fronts. When one of these parties gained majority, the other would usually become the Opposition party.

In 2014, NDA attracted vast majority, and Narendra Modi became Prime Minister & further refreshed his term during 2019 elections with clear majority, which was widely commended. However, it also drew criticism, with BJP being accused of fostering hyper-nationalism, anti-secular propaganda, and anti-minority acts such as mob lynching [8]. The 'watchdog phenomenon' in parliament came to an end with decimation of UPA. The government proposed some of the noteworthy bills like bills for RTI changes [9], surrogacy [10], Kashmir reorganisation [11] and Triple talaq [12] were passed hurriedly. As these bills were neither discussed properly, nor referred to any parliamentary committee for scrutiny, these instances were acts of arbitrary power, & violated the spirit of rule of law.

Research Gap

The Indian administrative set-up lies in the systems erected by the British raj, traced back to the Westminster model of governance of the UK. The parliamentary circuit of monarch, House of Commons, and House of Lords in England is reflected by the President, Lower house, and Upper house in India [13]. The basic tenets of Rule of law and parliamentary democracy along with, the concepts of collective accountability and a cabinet of ministers have been retained in India. Thus, when the Indian parliament is afflicted by arbitrary use of power, a logical approach is to extensively examine the Westminster model to discover a remedy. Overlooking the Westminster parliament's procedural elements, it is observed that there exists one formal body that thrives in England but is ignored in India: *The Shadow Cabinet*.

Research Objective

“The shadow cabinet is essentially the Opposition party putting forth its most experienced members to challenge government policy, political behaviour and operating performance in matters of legislation and execution of programmes” [14]. There has been no application of this concept at the Union level, but has been adopted at the state level, with varying degrees of success. However, research-wise, this area remains unexplored in the Indian context. Thus, the current research seeks to compare India's political-legal landscape with that of the UK, as well as to analyse the ramifications of instituting a shadow cabinet in India. It aims at finding the changes required in the Westminster model before it is functional in India and to identify whether it will help in reinforcing rule of law in India.

RESEARCH AND ANALYSIS

Peculiarities of Indian Politics

India has been vulnerable to regional and communal politics. From the composition of the constituent assembly to that of the first elected legislature followed by various coalition governments, inclusivity (members from different classes of society) has always been ensured over the years. However, in the latest elections, one single party gained majority and formed a government without requiring outside support [15]. This reduces inclusivity in governance, as members belonging to the same ideological groups take decisions for the entire nation. Although it is President's job to choose ministers for his cabinet, whilst the regulations oblige him to follow the Prime Minister's

recommendations [16]. The PM's and his ministers' thought processes are aligned, implying that he will receive recommendations just from those with whom he agrees. The public is only given access to the data that the cabinet deems fit for disclosure whereas; the cabinet's discussions are kept secret [17]. There is no system in place that allows citizens to openly discuss matters of national importance and disclose the debated arguments for public scrutiny.

During the reign of Pandit Nehru as PM, the aim behind creating Planning commission was to provide government with amply researched and well formulated policies and to ensure that the bills presented for discussion were not mere political documents, but instruments of socio-legal change [18]. However, bureaucracy and political coercion have recently harmed efficiency of such institutions. Also, members of the cabinet seldom accept suggestions of change while presenting bills [19] as it is considered to be a display of incompetency on part of the minister. However, it is beneficial for public, since alternative to the minister under scrutiny becomes available for consideration. Such approach is already in place in UK's parliament, where the Shadow Cabinet also serves as an alternative administration [20] in the event when the parliament disagrees with the policies of the ministers in charge and has authority to make changes to tabled bills, and introduce parallel bills of their own, allowing the actual cabinet to learn from its mistakes. Thus, all fingers point towards shadow cabinets as a viable solution.

Opposition Party: A Parliamentary Institution

Statistically, the number of bills approved with little or no debate has risen dramatically over the years, with some bills being passed in less than an hour [21], demonstrating lack of sincerity among the members proposing the bill. The discussion sheds attention on the bill's shortcomings while also eliciting valuable recommendations that might help the bill become a more relevant document. The justification for rushed passing of bills is stated as the opposition frequently disrupts proceedings out of political malice. The higher disruptions made by the opposition party showcases the lack of a valid platform of discussion.

The issue of not having an opposition party because no party gained more than 10% seats is a political ruse as there is no requirement of seats to qualify as an opposition party. The usage of parliamentary committees has been reduced under the current NDA regime, [22] degrading Rule of law. Also, Indian Opposition benches instead of opposing the invalid acts of government by challenging their principles, strategize “*to debate on controversial and irrelevant topics*” [23].

Comparatively, the English parliamentarians debate on principles, with prime motive to display themselves as a progressive alternative to the current government. However, no such pattern is present in India; the issues levelled against government are often flimsy charges of corruption and scandalous remarks. Thus, irrespective of quality, opposition merely delays the passage of bills until they are passed. For ministers in power, losing the position in the next elections means that they cannot track progress of the work that they initiated while in power. They often take exact opposite stance to what they believed, showcasing mere political feud that slowing the progress [24]. However, if the minister retains some significant authority even if they do not have a majority, they will be incentivised to perform better, which a shadow cabinet allows.

Effects and Circumstances of Parliamentary Adaptation

Equitable representation and Balance of Power

Secondly, this system fosters the concept that the government should regard the interests of the minority along with the majority. Recently, it has been noticed that the government tends to remain silent on situations involving violence against various minorities in the state, [25] and has introduced legislation that appear to implicitly take away the rights of the LGBTQ community, or has submitted bills with incomplete research. This cannot be completely eliminated, however it may be minimized and monitored via the benches of a shadow cabinet. The opposition party does not have the mandate

of the majority, but still represents a large number of people. Although the leader of the opposition has great power, it is meaningless if he does not have a supporting team which serve as his counsellors; a loyal cabinet, in that sense.

Research and Policy Making

Notably, the Modi government appears to have a habit of allocating more than one ministry to each of its cabinet ministers in proportion to their seniority. It has negatively impacted the quality of work done, with ministers frequently neglecting concerns pertaining to one ministry owing to overburdening of work in the other. The cabinet shares the Prime Minister's political views, which politically blinds the administration, and a range of policy-related improvements are ignored. Whereas a shadow cabinet, has the capacity to bring such concerns to the attention of the administration. It provides for a one-on-one organised opposition approach, allowing the parliament to target each ministry independently and with discipline [26].

Discussion, Criticism and Evaluation

The establishment of a debate forum would offer the proper prerequisites for the opposition to communicate to the public the shortcomings in a government bill. The current administration has been infamous for passing bills with as little as an hour of discussion. While parliamentary committees were supposed to serve as major sources of criticism, their role has been significantly decreased under the present government [27]. This may be rectified by establishing a shadow cabinet, which would give fair critique of the government's faulty policies. Furthermore, introducing their own bills, they can demonstrate their competence in front of the public, confirming the notion that an 'alternative government' is ready to take over if necessary.

Provision of Incentives and Remuneration

The Opposition's leader does not get the same pay as the other members of the House, but he is compensated separately for his efforts [28] and is given loans and other perks to compensate for his job burden. Shadow ministers shall be similarly compensated in order to reimburse their research and verification expenditures. They shall enjoy is the ability to set the agenda for debate when time necessitates. While the government's majority in the house means that it has relatively more agenda-setting ability, this issue can be resolved by adopting 'Opposition Days' [29] which the Westminster set-up follows which would encourage participation and proactive contribution of the opposition members.

State Level Experiments

Pilot versions of this system were tried in various state legislatures in the country [30]. The BJP sought to watch the administration in Maharashtra by forming its own informal shadow cabinet. However, the lack of legal mechanisms to promote their cause became a barrier. In Goa, the initiative was launched by Generation Next, a local NGO, which received success and was praised by BJP members of the existing administration. However, in recent years, India has seen the development of powerful regional parties, resulting in a state assembly seat allocation in which the winning party has an excessively larger share of the seats [31]. As a result, the opposition party is reduced to a size that is insufficient to form a shadow cabinet. Wherever non-parliamentary groups have formed the shadow cabinet's, there is no law to sustain its existence legally, politically, or financially.

Systemic and Procedural Modifications

An attempt to establish a Shadow Cabinet in India will require the following legal amendments. Article 74 [32] should be amended to include a sub-clause (3), where in the Shadow cabinet is defined along with its composition. The leader of the opposition should be seen as the equivalent of the leader of this shadow cabinet, in the same manner as the Prime Minister leads the cabinet. Next, it is necessary to add a sub-clause (d) to Article 78 [33], declaring that the Prime Minister shall, if the President so directs, make available any administrative or legislative decision of the council of ministers for proper consideration and debate before the Shadow cabinet, with all relevant facts. Next,

Article 107 [34] should be awarded with a sub-clause (6), to procedurally ensure that each bill is debated upon, between the Shadow Cabinet and the council of ministers, before it is put up for voting in any of the houses. In addition, sub-clause (7) should be introduced to provide for a distinct set of days for the Shadow Cabinet to propose its own bills, as well as discussion and criticism, in order to strengthen decision-making. This session of debate shall be termed as 'Opposition days,' and may be used to present public questions, recommendations by independent members, and other issues of relative significance on behalf of the country's minority groups. Finally, there should be an addition of Article 119 (A), mentioning that notwithstanding provisions of Article 119 [35], no other bill shall be presented for voting unless due procedure is followed. It shall specifically prohibit hasty bill presentation and voting if necessary debate between the minister and shadow cabinet is not completed. These amendments should be supplemented by an amendment to the Leader of the Opposition's Remuneration Rules [36] to include provisions for separate compensation for Shadow Ministers, as well as additional funds for research purposes.

CONCLUSION

It can be concluded that the Indian Politico-legal scenario is comparable to the circumstances in the UK as their parliamentary structures are fairly similar, since India borrowed theirs from the Westminster model of UK. Both countries recognise the system of checks and balances. The distinction reflects the way in which power is distributed in parliament, where the English government is held accountable to the Shadow Cabinet but its Indian equivalent is mostly unaccountable. The Indian parliament differs from the Westminster model in its use of parliamentary committees and shorter durations of bill debate. As a result, the solution to this issue rests in restoring a system of discussion and criticism in parliament, that can be successfully secured in India by establishing a shadow cabinet. If it is successful at the union level, it may be adopted by state legislatures as well. Such system would foster better levels of collaboration in decision-making, and empower elected representatives to hold the administration responsible in specific situations. It would encourage inclusive participation and decrease disruptions to proceedings. It will incentivise non-governmental members of the houses to actively participate in administration, and urge parties to represent their success through legislative and administrative programmes, rather than the face value of popular figureheads. Finally, it will provide experienced and specialised legislators the opportunity to continue with their portfolio as a monitoring entity even if their party loses power.

Recommendations

This research suggests additional examination of numerous statutes and regulations governing parliamentary operations, to assess structural additions that Parliament would need. India borrows constitutional provisions from nations like Australia, Canada, and France, therefore, a comparative study of these countries' parliamentary structures and shadow cabinets is required.

In order to fit the shadow cabinet into Indian constitutional machinery, this study recommends the above- mentioned amendments to articles 74, 78, 107 and 119 of the Constitution. Further, research shall be conducted at the state level as well, to inculcate the shadow cabinet into institutional spirit of the country. Conclusively, the research suggests that the Shadow Cabinet system be incorporated into the Indian parliament after thorough examination and review of the existing conditions, based on statistical and doctrinal data, opinion-based arguments presented herein and, extensive politico-legal analysis.

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