Parliamentary oversight of the executive in India

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LEGAL FRAMEWORK FOR THE PARLIAMENTARY OVERSIGHT OF THE EXECUTIVE IN
INDIA

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Abstract

The need for a strong monitoring mechanism of the executive in India has been made clearer by recent allegations of corruption against high-ranking officials of the central government. The Indian Parliament is the ideal institution to perform such a monitoring function through oversight of the central executive. The executive in India is directly accountable to the Parliament. Making oversight by Parliament stronger and more effective would therefore increase the accountability of the executive. Additionally, an increased oversight role would allow for greater policy inputs from Parliament to the executive. It would also increase the general level of expertise within Parliament by making parliamentarians more technocratic and giving them greater avenues for specialization in different aspects of policymaking. This has held true to varying degrees in different countries as examined in this paper. Enacting a law formalizing mechanisms of oversight within Parliament, especially within the committee system, can create such a framework in India. The central focus of a strong oversight framework is the system of parliamentary committees. Reinvigorating existing committees by giving them greater autonomy, clearer powers and research support are central tenets of the law drafted at the end of this paper. Along with restructuring parliamentary committees, the incentive structure for Indian parliamentarians to conduct oversight is also examined, and proposals are suggested to ensure they perform their oversight function effectively. Such a law should reshape the way Parliamentary business is conducted with a view to holding government accountable, while at the same time allowing the central executive to function independently, and with greater efficiency.
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Introduction
In 2008, India’s Department of Telecommunications issued 120 licenses for unified access services in one day. A number of allegations regarding the allocation of spectrum under this process were raised, including the prices fixed for such allocation.¹
The report of the Comptroller and Auditor General of India² found various discrepancies in the actions of the Department. These included gaps in policy implementation, overruling of objections of other concerned ministries, arbitrary changes in cut-off dates, and issuance of licenses to ineligible applicants.³

Similar allegations of corruption were raised regarding the organization of the Commonwealth Games that took place in Delhi from October 3 – 14, 2010. The Comptroller and Auditor General again found various discrepancies in the handling of the event. The methods of tendering construction projects, costs associated with the event, deviation from set standards of equipment and construction were all called into question.⁴

Both these cases involved financial irregularities on a massive scale.⁵ In both, the actions of high-ranking politicians and bureaucrats were called into question.⁶ Civil society organizations responded with demands for an independent ombudsman-like

¹ See infra note 2.
³ Id.
⁵ In the case of issuance of spectrum by the Department of Telecommunications, the CAG estimated a presumptive loss of Rupees One lakh seventy six thousand crore (USD 35 Billion at current exchange rates).
(Lokpal) body to be created for checking corruption. The demand for such a body gained widespread support, and a modified version of the Bill was also passed in the lower house of the Parliament.

The creation of an independent ombudsman may be legitimate in the Indian context, but these alleged incidents of corruption also highlight the lack of monitoring by existing institutions. The alleged irregularities took place over a considerable period of time, yet no investigative or oversight agency took preventive action. This is because the executive does not have effective monitoring mechanisms in place and because existing legal institutions do not perform oversight effectively.

An additional reason for enhanced oversight is the establishment of independent sector-specific regulators. Since the mid-1980s, a number of new regulatory agencies have been established. As the country has veered towards a path of economic reform, the role of the state is also slowly undergoing a change. From 1947 to the late 1980s, the state had a central presence in many important economic activities. It either participated in, or tightly regulated both agriculture and industry. It mainly did so through a combination of entry and exit barriers as well as quantitative and price controls. The state’s role has changed since the 1990s. It has removed significant regulatory controls to promote the participation of the private sector. It has shifted from a direct participant in many economic activities to that of a regulator. Consequently, proposed economic reforms envision the creation of more regulatory agencies.

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8 The Bill did not pass in the upper house, and so has not been enacted into law.
The Indian Parliament is ideally suited to performing such an oversight role. This paper finds strong parliamentary oversight is a more established feature of presidential democracies such as the USA than in Westminster-style parliamentary democracies, including the UK. This is due mainly to differing notions of political accountability and separation of powers within the two systems. However, the example of South Africa demonstrates that formalistic notions of parliamentary supremacy and separation of powers do not necessarily hinder the recognition of oversight as a central function of parliament.9

The Indian Parliament has historically played a limited role in overseeing executive agencies. It does so mainly by examining departmental budgets, ex-post examination of draft legislation, and occasionally by conveying its policy preferences to the executive. This paper shows that there is little regular oversight of executive agencies apart from the activities of the three financial committees i.e. the Public Accounts Committee, the Committee on Estimates, and the Committee on Public Undertakings. In the last two decades or so, this lack of regular monitoring has increased.

In the instances mentioned above, as well as many others, Parliament limits its involvement to an ex-post investigation into allegations of wrongdoing. Such investigation by joint parliamentary committees is just investigation among others being conducted by investigative agencies. Mechanisms for ex-ante oversight by Parliament would be much more effective in preventing executive indiscretion. Additionally, for structural reasons, Parliament may be the only institution capable of providing such continuous and holistic scrutiny over the executive. This paper proposes new mechanisms to facilitate such scrutiny.

9 The South African Constitution explicitly mentions oversight as one of the functions of their Parliament.
Parliamentary scrutiny of sector-specific regulators is also required. The Parliament does not directly oversee any existing national regulatory agency. Though these agencies are created by legislation, no law provides for comprehensive oversight by Parliament. Most such legislation contains a limited requirement of laying all delegated legislation framed by rule-making authorities before both houses of Parliament. As this paper demonstrates papers laid in the Houses of Parliament are rarely discussed. This paper argues that this limited requirement is insufficient to exercise effective oversight over regulatory agencies.

Accordingly, this paper creates a legal framework to modify the existing structure of parliamentary oversight. The main tenets of the framework are to substantially alter the structure and powers of existing parliamentary committees and to rework the interrelationship between parliamentary committees and proceedings in the upper house and lower house is also re-worked. The viability of such structural modifications can also be seen in the guidelines for parliamentary reform suggested in the United Kingdom.

The first part of this paper presents justification for having strong parliamentary oversight in India. As noted earlier, strong parliamentary oversight is not common to the Westminster model of democracy. The principle of parliamentary sovereignty assumes the accountability of the elected executive to the legislature. However, traditional mechanisms of accountability do not always provide for the most stringent scrutiny of the executive.

The second part of this paper provides a short overview of different forms of oversight in other democracies. The US Congress is looked at in some detail. While oversight in the US is predicated on a clear separation of powers between the executive and the
legislature, it is equally based on the system of checks and balances between the two branches.\(^\text{10}\) This is different from the Indian system where a clear separation of powers does not exist. The principle of checks and balances is the basis for examining Congressional mechanisms for oversight over the executive. Along with the US, South Africa and UK are also examined. The UK is important since the Indian Parliamentary system is based largely on the Westminster model. More importantly, the literature on the need for parliamentary reform in the UK is also relevant for any remodeling of the Indian framework.

The last part of this paper lays out an elaborate framework to enhance and invigorate parliamentary oversight in India. The committee system is essential to deliberative, focused parliamentary oversight. The structure of the existing committee system is remodeled to allow for greater expertise and focused scrutiny over the executive. A central principle of this and other proposed reforms is to balance the independence of the executive with the need for oversight. The independence of the executive is necessary to allow the democratic majoritarian electoral process to function efficiently by preventing unnecessary obstructionism by the opposition. Strong oversight should inform administrative efficiency rather than obstruct it. The proposals outlined in this paper ensure this balance is maintained.

This paper also examines the incentive structure of parliamentarians acting as committee members, and I suggest proposals to ensure they take their oversight role more seriously. This is important to ensure any suggested proposals are feasible. Parliamentarians necessarily have to devote a considerable portion of their time to their constituency. Any proposal for reform that either fails to rework the existing incentive

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structure for parliamentarians, or imposes too onerous a burden for oversight may not be effective. The final part will also provide a detailed draft legislation covering various aspects of legislative oversight, as well as the probable consequences of such legislation.

Part I
This part seeks to lay the groundwork for a discussion on the relationship between the executive and the legislature in democracies, and how inter-branch accountability and separation-of-powers need to be balanced to enable higher efficiency in government. It also examines the broader objective of having strong parliamentary oversight in India.

Executive – Legislative relations and the necessity for oversight
Oversight is routinely assumed to be beneficial to the democratic process, but does requiring the executive to be subject to continuous legislative monitoring not impede the implementation of the majority parties’ policy goals? One answer may be that oversight actually aids in such implementation by ensuring bureaucrats comply with the majority’s policy goals. Another response could also be that oversight ensures that politically expedient short-term goals of the majority do not sideline more urgent, long-term goals. Such an explanation is convoluted because it seems both majoritarian and counter-majoritarian at the same time!

As far back as 1916 Woodrow Wilson that oversight is at least as important a function of the legislature as legislation. Rick Stapenhurst and Riccardo Pelizzo show

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11 See Rockman, infra note 18, p. 416.
interesting correlations between oversight mechanisms and a given form of government. Their research shows that as the number of oversight mechanisms within a political system increase, the more likely it is that the government is potentially subject to control, and therefore more likely democratic. The question then is whether greater democratization is a sufficient end for increasing oversight mechanisms. While democracy is an important value it has to be balanced with political stability for ensuring administrative efficiency. Usually constitutions provide the framework for finding such balance. However, it is really political institutions in their discharge of constitutionally mandated functions that determine where this balance is located. The following portion argues for stronger oversight in the Indian context while seeking to balance the need for oversight with other considerations discussed above.

**Justification for oversight**

Any argument for oversight must begin with an examination of the nature of the executive-legislature relationship. Anthony King argues for looking beyond the “Montesquieu formula”, and the need to consider varying political relationships within the two branches across different jurisdictions. Analyzing the British parliamentary process, he argues that even within the majority, the government, and the backbenchers need to be thought of separately. They are interdependent, and from the government’s

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point of view their need of backbencher’s votes makes them the most important constituent of Parliament.

This analysis does not hold completely true for India because of the existence of the anti-defection law.\(^{15}\) The law penalizes parliamentarians who disobey the party whip by disqualification from the Parliament.\(^{16}\) However, his point that both the executive and the legislature are composed of smaller constituents is well taken. For the basis of this analysis I consider the legislature to include all parliamentarians except those that constitute the government. Once this is done, the two main constituent groups of parliamentarians are majority members who are not part of the government, and opposition members. As King notes about the British Parliament, “the dice used in the game are loaded heavily in the Government’s favor. The Opposition lacks all the things that Government backbenchers lack- information, expertise, day-to-day involvement in governing, moral authority—and much else besides.”\(^{17}\)

The same observation is true about the two groups of parliamentarians in India. In effect, this group forms the main oversight body for the government. This division of the legislature into a smaller subdivision also helps also provides a clearer basis for examining the need for oversight.

Bert A. Rockman sets out various commonly given justifications ranging from normative arguments to functional ones, and says that the “principle value” in this debate

\(^{15}\) Constitution of India 1950, Tenth Schedule.
\(^{17}\) King, *supra* note 1, p. 18.
on oversight is the superiority of democratic representation over effectiveness.\(^\text{18}\) He focuses more on the definitional issue related to oversight. However, the justification for oversight requires greater debate if one is to resolve the balancing of priorities between representativeness and efficiency or stability.

Rebecca L. Brown argues for the importance of greater powers of legislatures by challenging assumptions of the purpose of political accountability.\(^\text{19}\) Her paper aims to prove the legitimacy of unaccountable judicial review in the face of conventional arguments of the judicial branch being unelected and therefore unaccountable to citizens. She says that this conflict can be resolved if majoritarian rule itself is seen as a mechanism to protect individual liberty, rather than individual rights. Therefore only a politically accountable government could sustain a judiciary committed to the protection of individual rights.\(^\text{20}\) According to her, writers in the early part of the twentieth century made the argument that legislatures are better forums for achieving policy goals than other branches. Their proposition had nothing to do with political accountability.\(^\text{21}\) This argument has important implications for the unelected executive as well.

Brown is in essence arguing that greater operational powers to the legislature were desired because it is a better body to enforce policy objectives than other ones. Moreover, as she persuasively states, it is not contentious to propose that some values must trump majority preferences. However, her analysis of which values do in fact trump majority preferences is directed towards the judicial branch rather than the executive.\(^\text{22}\)

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\(^\text{20}\) *Id.* at p. 534 – 36.

\(^\text{21}\) *Id.* at p. 546-47.

\(^\text{22}\) *Id.* at p. 550-556.
One could argue that stability or efficiency is in fact a value to be balanced against greater democratization. This argument could be given weight to in the context of some particular features of the Indian democracy. Firstly, unlike the US presidential system of government India does not have a strict separation of powers. The executive is at least formally accountable to the Parliament. Secondly, administrative stability is of real value to a democracy like India where instability may lead to serious governance crises. Though this fear is not empirically borne out in India, the risk of serious administrative instability crippling economic growth is theoretically possible.

Most important however, is the structural factor. In India, the Parliament is not the main proponent of legislation. Legislation is drafted by the government and then debated and passed by the legislature. Compared to systems with strict separation of powers, the Indian Parliament does not perform the role of a primary lawmaker. Laws are debated, sometimes modified by the Parliament, but rarely initiated within Parliament. As a consequence the primary function of the Parliament in India is to hold the government accountable.

So we remain faced with a paradox, where the main function of Parliament is to hold the executive accountable, but executive stability is also an important virtue to be protected. It is easy to understand notions of accountability in terms of a rights-based discourse. Representative governments can both protect and endanger rights. However, the oversight function is designed for more than the protection of explicit legal rights. If used properly, oversight should increase governmental efficiency. In this context, it is important to understand that parliamentary oversight is not just an increased democratization of the administrative machinery. It should also lead to an increase in

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23 See supra note 93, p. 558-61.
technocratic values among elected representatives. This notion is not simply a “preanalytic hostility to the modern administrative state, an anti-bureaucratic pastoralism that feeds on nostalgia for simpler, more integrated times.”24 Edward Rubin highlights three arguments related to elections and accountability.25 The one relevant to us is that legislators, not bureaucrats should make policy decisions. They should also not delegate such decision making power to government officials who are not elected. He claims this conception is problematic by debunking the purposes of elections. The representative purpose of elections serves to elect not the most talented and capable person, but the one the electorate can identify most with. According to Rubin, this is the opposite of accountability since voters are really choosing someone likely to share their perspective rather than someone who would rely on instructions to do what the superior wants regardless of his personal views.26

This conception seems overly simplistic. Though Rubin concedes that holding a representative accountable is another function of elections, he subordinates it to succession and representation.27 However, representation and accountability are not as clearly distinguishable from one another as Rubin makes out. Certainly, it would be difficult to impute these two as clearly separable motives to the electorate when voting. It is easier to argue that voters choose representatives who offer the best combination of representativeness and accountability. They elect representatives who not only share the same value systems and preferences as the electorate; they also seem the most likely to abide by those values systems and preferences. Here the accountability function is more

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25 Id. at p. 2076.
26 See supra note 24 at p. 2078 – 79.
27 Id.
about how well the representative will be able to deliver on his promises, rather than how well he will take instructions. If this is the case, there is a persuasive justification for creating a more technocratic political class that can deliver on its promises better.

The justification for increasing technocratic skills within parliamentarians is also related to the case made out by M. Shamsul Haque who writes on bureaucratic accountability in developing countries with economic transitions similar to India.\textsuperscript{28} His contention is that while many states have changed the nature of the bureaucracy to become more pro-market, such changes have themselves led to a situation where bureaucratic accountability has eroded. He draws on a variety of legal systems from Latin America to South Asia to show how the bureaucratic role is being reshaped from that of being an economic actor to being a supporter of market-led growth. This transition is also noticeable in India with the creation of a number of regulators with varying degrees of independence from the executive.

Thus the justification for increased parliamentary oversight in India is not merely to hold the executive more accountable to voters. That is one very important part of the process. The more important justification is also to create a more efficient political class. An increase in the Parliament’s oversight functions would ideally create incentives for legislators to acquire and display a better command over policymaking than those who are part of the government. This increase in oversight would change due to a role in the nature of parliamentary activities itself. Parliament as a collective unit becomes more

technocratic because the incentives to conduct oversight become stronger. This should enhance the representativeness of India’s democratic process.

Many have commented on the incentives for elected representatives to engage in parliamentary work in India. It is a common refrain that the anti-defection law acts as a disincentive towards greater participation in parliamentary activities. However, that does not explain the existing rates of participation among members. The anti-defection law has definitely played a part in reducing incentives for individual initiative in Parliament, but members utilize whatever opportunities they have to speak independently. True, members do not disobey party whips, but even members of the majority party do take the opportunity to question the government on the floor of either House. The debate on the Educational Tribunals Bill, 2010 was an example where members of the ruling party strongly criticized the government’s position. Committees also usually function on a bipartisan basis. Committee reports indicate a willingness to question government policies and motives irrespective of party associations.

These findings show that members are willing to act independently provided there is sufficient structural reform. The anti-defection was intended to curb political instability by preventing the once rampant switching of parties. It is not intended to prevent the exercise of a parliamentarian’s right to hold the government accountable. It is thus not the only problem preventing the Indian Parliament from performing its functions better.

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30 Dr. K. Keshava Rao, Member of the ruling Indian National Congress party during the debate in the Rajya Sabha on The Educational Tribunals Bill, 2010, p. 23 – 28, available at http://rsdebate.nic.in/bitstream/123456789/403416/2/PD_220_31082010_p16_p32_22.pdf#search=“educational%20tribunal” (last visited 1/16/12).
The discussion above allows for the statement of some concrete reasons for conducting oversight in India. Morton Rosenberg states many reasons for the US Congress conducting oversight.\(^{31}\) Some of these are relevant for India and are mentioned below:

- Ensure that the executive complies with legislative intent;
- Improve the efficiency and effectiveness of governmental performance;
- Evaluate program performance;
- Investigation of instances of poor administration, abuse, waste, fraud and dishonesty;
- Protect individual rights and liberties.

Any legal framework for oversight should enable the Indian Parliament to meet these objectives.

**Part II**

This part seeks to answer the question: Why is strengthening parliamentary oversight for India? In seeking to answer this question, this section of the paper challenges the structural consequences to the conventional paradigm of parliamentary sovereignty. Parliamentary sovereignty usually implies the presence of a strong executive that is accountable to Parliament. While the executive is conventionally held accountable by Parliament in a number of ways, I demonstrate below that clinging to conventional mechanisms in India has come at the cost of real accountability.

The Executive in India

The Indian constitution makes the Council of Ministers with the Prime Minister at its head the functional head of the federal executive. A minister has to be a member of one of the houses of Parliament, and the Council is collectively responsible to the House of the People (“Lok Sabha” or lower house). This constitutes the primary means of legislative control over the executive, since a motion of “no-confidence” in the Lok Sabha against the government forces the ruling party/coalition to prove its majority in the House.

The business of the Council of Ministers is conducted primarily according to the Allocation of Business Rules and the Transaction of Business Rules. Both are regulations framed under the executive power of the federal government. These regulations govern both the manner of allocating executive business, as well as the transaction of subjects under the jurisdiction of two or more departments.

Every minister is in-charge of one or more departments of the federal government. Senior bureaucrats in each of these departments have rule-making powers regarding subjects under their jurisdiction. The formulation of these rules does not require any legislative approval. They are subject to approval from the concerned

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32 Constitution of India 1950, Article 74.
33 Constitution of India 1950, Article 75(5).
34 Article 75(4).
37 Unlike the US Constitution, the Article 73 of the Indian Constitution makes the power of the federal executive co-existent with the Indian Parliament.
38 Ministry of Human Resource Development has the Department of School Education & Literacy and the Department of Higher Education under it; for a list of departments under the Ministry of Environment & Forests, go to the website of the Ministry, at: http://moef.nic.in/modules/about-the-ministry/divisions/.
Minister, and in some cases, the Council of Ministers\textsuperscript{39}. The statutory enactment providing for rule-making power does however limit the scope of rule making.

**Regulatory agencies**

A number of sector-specific, independent regulators have also been established over the last two decades or so. The first such regulator was the Securities and Exchange Board of India in 1992. The telecom regulator was established in 1997, and the electricity regulator was established in 1998. A number of others have followed, though most regulators are concentrated in the finance and infrastructure sectors.

One noticeable feature of regulatory bodies in India is the varying degree of autonomy the regulator enjoys from the relevant ministry. Work done by Saugata Bhattacharya and Urjit R. Patel\textsuperscript{40} on regulatory bodies in India partly attributes the mixed effectiveness of these regulatory agencies to the “faulty design” of these institutions.\textsuperscript{41}

Another noticeable facet is the lack of direct accountability of any regulator to the legislative branch. K.B.L. Mathur notes that statutory provisions make regulators accountable to the executive rather than the legislature.\textsuperscript{42} One may argue that in a parliamentary democracy, accountability is ensured indirectly through ministerial

\textsuperscript{39} Cases where the Prime Minister or the Council decides to look at the issue itself, or supervise policy formulation. Examples would be the Group of Ministers (GoM) on the review of the fertilizer policy, or the GoM on evolving an integrated strategy on water management. The complete list is available at http://cabsec.nic.in/showpdf.php?type=listofgoms (last visited 01/05/2012).


\textsuperscript{41} See Id. at p. 455 (They point out inadequate conferment of executive powers as one key example of such design).

responsibility to Parliament. However, this is one of the central separation-of-powers arguments this paper critiques.

Even mechanisms of direct accountability do not seem to be working as intended. As with most other agencies created by statute, statutory provisions dictate that regulators place regulations framed by them before Parliament. Although they comply with this requirement, Parliament hardly, if ever examines these rules in the houses.

I argue that correcting the “faulty design” issue and creating more effective mechanisms of direct accountability of regulatory agencies are both essential components of a good framework of legislative oversight.

Role in passing legislation

The executive also drafts all legislation to be introduced in Parliament. Though any Member of Parliament can introduce his or her own bill (referred to as Private Member Bills), they almost never get passed (the last Private Member Bill was passed in Parliament in 1970). The Ministry in charge of the subject the bill pertains to usually drafts it. External input or consultation is not mandated at this drafting stage. Once the Ministry drafts the bill, it has to be approved by the Cabinet (all senior Ministers within

44 I collected data on the laying of regulations in Parliament between February 2008 and December 2010 (Bulletin I of Lok Sabha, available at http://164.100.47.132/LssNew/Business/Bulletn1Current.aspx, as on 10/1/2012). I also examined reports of the Committees on Subordinate Legislation of both the Lok Sabha (lower house) and the Rajya Sabha (upper house) between April 2008 and December 2010 (available at http://164.100.47.134/committee/committee_information.aspx), and none of the reports during this period pertained to regulations framed by independent regulators.
the Council of Ministers). Once the Cabinet approves of the bill, it is introduced in Parliament.

Legislative scrutiny begins thus begins only once the bill has been completely drafted. Once in Parliament, the Speaker/Chairman usually assigns the bill to the relevant Departmentally Related Standing Committee. The Committee may recommend changes/modifications/additions to the bill. The executive may or may not agree to these recommendations before the bill is put to vote.

This aspect of executive power is crucial to the argument presented in this paper. Unlike presidential systems, the executive in India has a disproportionate role in preparing legislation. Bills therefore usually tend to reflect the policy preferences of the ruling party and more importantly, also of the bureaucrats who draft it. This in itself reduces the incentive to create legislation with strong mechanisms to monitor the executive.

Scholars have also commented on the general derogation of legislative monitoring of executive functions since the early years of our independence, particularly since the emergency imposed in 1975.46 However, the fact is that India has had a long history of rule by the executive preceding independence, which continued without radical overhauls after independence as well.

This historical advantage over the legislative branch has been arguably consolidated since the Emergency. Both in 1965, and in 1978, reports of two committees of inquiry

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both acknowledged corruption within the bureaucracy, and observed that this is due to the “sudden growth in administrative power and discretion”.47

This erosion in standards and increase in corruption has been attributed to the political heads in-charge of the executive.48 However, political heads of government departments also remain protected because of lack of effective oversight mechanisms. This strengthens the argument that existing mechanisms of ministerial responsibility to Parliament are not enough. While governments have faced no-confidence motions in Parliament49, a government’s defeat in a no-confidence motion is also a perceived indicator of political instability. This arguably decreases faith in political processes rather than restoring faith in mechanisms of political accountability.

There is therefore a strong case for developing more stable, and more effective mechanisms for executive accountability to Parliament. The next section provides an overview of the functioning and the existing oversight mechanism in the Indian Parliament.

Parliament and the Parliamentary system

The Indian Parliament consists of two houses. The Lok Sabha or the lower house consists of 545 directly elected members.50 The Rajya Sabha or the upper house consists

48 See supra note 46. Also see Kapur and Mehta infra note 82.
49 Governments have also faced no-confidence motions because it was alleged that they had lost the support of the majority, and also because they were required to prove their majority on particular policy issues (for example the no-confidence vote they ruling UPA government had to face on the issue of entering into a nuclear trade agreement with the US).
50 A certain number of seats are reserved for members from centrally administered Union Territories and members of the Anglo-Indian community.
of 250 members elected by elected members of state legislatures. Unlike the US Constitution, the Indian Constitution does not explicitly assign legislative power to Parliament. It details the procedure regarding the passage of legislation, and the transaction of financial business. However, the executive also has the power to pass legislation in the form of ordinances when Parliament is not in session.

In order to become law, legislation must pass both houses. However, the annual budget is discussed only in the Lok Sabha, and other money Bills also have to be introduced in the Lok Sabha. Parliament convenes at the pleasure of the President (read ruling government) thrice a year. Though the number of sessions in a year has remained mostly consistent, the number of days Parliament works every year has gone down considerably. “The number of sitting days has come down from about 140 days a year in the 1950s to an average of sixty-five days over the past five years.”

Though this has also been complemented by the growth of departmentally related committees, as the subsequent pages illustrate, their effectiveness has not been great enough to offset this reduction of working days.

A typical day in Parliament is divided into a Question Hour, a Zero Hour, discussions on resolutions or motions proposed by members, and time allotted for government business. The allocation of time for business is done by the Business Advisory

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51 12 members are nominated for expertise in particular matters such as literature, arts, and social service.
52 U.S. Constitution, Art. 1.
53 List I of the Seventh Schedule contains an exhaustive list of subjects Parliament may legislate on.
54 Constitution of India 1950, Articles 107-111.
55 Constitution of India 1950, Articles 111 – 118.
56 As per Article 123, ordinances are valid for a period of six weeks after Parliament reconvenes.
Committee and then put to vote in the House. The business to be transacted is decided by the Speaker in consultation with the Leader of the House (leader of the majority).

This framework obviously works against effective oversight. If the floor of the House is the most visible forum for holding the government accountable, the above-mentioned facts work against such accountability. While the Business Advisory Committee consists of Parliamentarians from most parties, the main task of the committee is to allot the amount of time for different business, rather than negotiate what business should be conducted. Negotiations over what business should be transacted usually take place in informal settings, or on the floor of either House, with the opposition disrupting proceedings to demand discussion on a particular issue. Either of the alternatives is an ineffective way to promote accountability.

In the first scenario, the ruling government and the principal opposition party have sufficient power to settle on a common list of issues. The principal opposition also has the least incentive to hold the government accountable. Devesh Kapur and Pratap Bhanu Mehta argue that “in the practice of parliamentary opposition in India, the opposition uses Parliament more to impugn the credibility of governments than to exercise accountability for the sake of good governance.”

They point out that due to structural reasons, opposition parties do not have sufficient incentives for oversight and monitoring. Therefore, they concentrate more on reacting to incidents and scandals rather than focus on systemic changes. Another author

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59 Id.
60 The government also has a majority of the members within the Business Advisory Committee.
61 Infra, at 82, p. 10.
62 Id.
takes a more extreme view and states that Parliament as an institution has served more “as a public forum for the ventilation of grievances.”

Rubinoff also states that because of the suppression of the majority Congress party in the 1980s, opposition members increasingly resorted to disruptive tactics. It is debatable to what extent majority suppression rather than undermining of structural systems led to increased disruption. We have noted earlier the decrease in the number of working days of Parliament every year. With such decrease, the priority for government business would obviously increase, also decreasing the time available for Parliamentarians to raise other issues of national importance. With lesser and lesser time available for raising their own issues, the incentive for Parliamentarians to indulge in disruptive behavior would also increase.

In this latter scenario where the business of either House is disrupted, the business of the House is left unfinished, undermining whatever limited accountability a working Parliament would impose. Importantly, it affects the legitimacy of the political class and the value of the Parliamentary process in the public sphere. In fact, we can safely presume this to be one reason why certain civil society activists were recently able to garner so much support in literally setting Parliament a deadline for passing an anti-corruption Bill.

The committee system and its problems
Similar to the US, a large number of issues not discussed on the floor of the houses are discussed in the Departmentally Related Standing Committees (“DRSC”/ “standing

63 See supra note 46.
64 Id.
committee”). At present, there are sixteen DRSCs administered by the Lok Sabha Secretariat and eight by the Rajya Sabha secretariat. There are also a number of other committees, and three financial committees are noteworthy. These are the Public Accounts Committee ("PAC"), the Committee on Estimates, and the Committee on Public Undertakings. The Estimates Committee is tasked to recommend improvements in the organization of government, and to check whether the financial estimates of the government fall within the policies of the government. The Committee on Public Undertakings supervises the functioning of government owned industrial units.

The PAC was first set up in 1921 and is one of the oldest committees of Parliament. It is responsible for exercising ex-post facto oversight over the expenditure of the government. In doing so, it mainly takes the help of the reports of the Comptroller and Auditor General of India. However, its effectiveness is also questionable since a large number of government departments do not actually respond to questions asked by the PAC on the basis of the CAG reports.

66 The DRSCs are under the Lok Sabha or the Rajya Sabha only for administrative purposes. Most committees include members from both Houses.
67 Parliament of India, Financial Committees, available at http://164.100.47.134/committee/committee_list.aspx (last visited 12/1/12)
71 In 2009-10, a PAC report observed that more almost 5,000 paragraphs of CAG reports related to various ministries were still pending with the ministries before the PAC could examine them. See, Anirudh Burman, Financial Oversight by Parliament: Background Note on Conference on Effective Legislatures, PRS Legislative Research, (November 15, 2010), available at http://www.prsindia.org/administrator/uploads/media/Conference%20note/Conference%20note%20on%20financial%20oversight.pdf (last visited 1/20/12).
Most of the oversight business of Parliamentary Committees is conducted according to a set of rules and procedures. A Rules Committee exists in both houses of Parliament, and they are responsible for framing and modifying rules for the conduct of business. This is considerably different from the framework within the US Congress. In the US procedures regarding oversight especially are also governed by legislation in addition to the rules of different committees and those adopted by the two houses. The Legislative Reorganization Act was one of the first statutes specifically on oversight. It standardized committee structures in both houses of Congress and created a “professional oversight staff for committees”. The Act also obliged congressional committees to exercise oversight powers over government departments within their subject area. Though there was a healthy mechanism of oversight even prior to this law, it was instrumental in giving legislative mandate to the system of oversight. No such mandate for oversight exists in India.

While scholars have noted that the Indian government accepts a large proportion of committee recommendations, this paper would like to argue against the overall effectiveness of the committee system at present. Firstly, a mere study of the number of

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72 Article 118 of the Constitution provides that both houses of Parliament may frame rules to regulate its procedure and business.
73 Parliament of India, Lok Sabha, Background Note Regarding the Rules Committee (Introduction), http://164.100.47.134/committee/committee_information.aspx.
74 Jack M. Beermann, Congressional Administration, 43 San Diego L. Rev. 61, 123 (2006).
75 Id.
77 Id.
79 Data collated by me also indicates that the number of recommendations for budgetary demands accepted over a five-year period between 2004-08 ranged from 46 – 50%. Anirudh Burman, Financial Oversight by Parliament: Background note for Conference on Effective Legislatures, PRS Legislative Research (November 15, 2010), available at
recommendations accepted is not always an accurate barometer of effectiveness.

Committee reports contain both important policy recommendations, as well as minor recommendations concerning usage of particular words. So while the government may agree to a number of recommendations made by a committee, it is difficult to accurately state that the recommendations accepted were the most critical to affecting government policy on a particular issue.

Secondly, DSRCs do not pay sufficient attention to a broad range of government policies in the first place. Most DSRCs look primarily at budget documents, bills referred to them, and other policy issues under their jurisdiction. A perusal of the list of reports prepared by most DSRCs shows an alarmingly low proportion of reports on policy issues.

To be fair, the Committee on Estimates looks at policy issues related to financial allocations made by the government, and the PAC looks at reports of the Comptroller and Auditor General (a constitutional auditor of the finances of the central government) on government expenditure. However, additional factors limit the effectiveness of their work as well as the DRSCs.

One such factor is the problem that hardly any of these reports prepared by parliamentary committees is ever discussed on the floor of either house. Other scholars have also highlighted this as a major issue limiting Parliament’s ability in holding the

http://www.prsindia.org/administrator/uploads/media/Conference%20note/Conference%20note%20on%20financial%20oversight.pdf (last visited 1/12/12). I would like to acknowledge the contribution of Ms. Esha Singh Alagh towards the collation of this data.

80 Introduction, Committee on Estimates, Lok Sabha, Parliament of India, available at http://164.100.47.134/committee/committee_informations.aspx (last visited 1/30/12).


executive accountable. For example, Devesh Kapur and Pratap Bhanu Mehta note that committee reports have limited effect since,

*Most committee reports are not tabled for deliberation and discussion in Parliament at all. The dilemma is that if the committee reports are at variance with the government, the majority has no interest in having them tabled; however, if they broadly uphold the government’s position, they are considered superfluous.*

Fourth, a bare perusal of certain committees of the US House of Representatives indicates a much higher number of non-legislative activity over a period of twelve months. While such data is hardly exhaustive, the amount of non-legislative work done by Indian DRSCs in the Lok Sabha is considerably less. For example in 2011, the Committee on Agriculture examined just two new subjects compared to twenty-eight by its counterpart in the US House of Representatives.

Fifth, there is a considerable time lag in the response provided by the government. Action Taken Reports on the annual budget take between 6 – 10 months to be presented in the houses of Parliament. This even though the annual budget of the central government is passed in the same session in which the budget is tabled in Parliament (the Budget session usually runs between March – May, with a three week recess to discuss the demand for grants for various ministries/departments within the respective DRSC).

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83 *Id.*
84 In the year 2011, the Committee on Financial Services (subcommittees included) held and reported 86 non-legislative hearings. The Committee on Agriculture managed 28, while the Committee on Armed Services and the Committee on Budget managed 93 and 17 respectively (H.R. Rep. No. 112-355, at 271-73 (2011), H.R. Rep. No. 112-340 (2011), and H.R. Rep. No. 112-359 (2011) respectively).
85 Reports Presented, Departmentally Related Standing Committee on Agriculture, Parliament of India, available at [http://164.100.47.134/committee/committee_informations.aspx](http://164.100.47.134/committee/committee_informations.aspx) (last visited 1/13/12).
86 I have not considered reports titled Action Taken Reports. These are reports based on the response of the government department to an earlier report. Adding these, the number goes up to 15.
87 See *supra* note 84.
88 See *supra* note 79.
The rules of the Lok Sabha mandate that the House consider the “Demand for Grants” (budgetary allocations demanded by ministries) in light of the reports of the committees. In practice, the House does not discuss most of the Demands. Most of the Demands not discussed are “guillotined” (passed without discussion with the consent of the House) by the Speaker.

The process of preparing an Action Taken Report is therefore redundant. By the time of its publication, the financial year is almost over. The inevitability of this lag gives members of Parliament to conduct investigations into the budgetary allocations demanded by different departments.

Moreover, not only are Ministers not part of committees, any demand for getting a Minister to depose before a committee has to be approved by the Speaker. Senior bureaucrats usually depose before committees on behalf of their department. Kapur and Mehta point out that a high turnover of bureaucrats often obliges one bureaucrat to defend the actions of his predecessor. They point out that by not requiring a minister to appear before a committee, “Parliament appears to be defending one of its own”. As the head of the Ministry, the Minister should actually be mandated to appear before a committee when called.

Seventh, Committees are usually reconstituted every year. This prevents expertise from developing within the membership of the committee. The frequent turnover leads to

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90 Nearly 90% of the demands were guillotined every year between 2004-05 and 2009-10. See Burman supra note 89, p. 1-2. Also see Rubinoff, supra note 46, at p. 25.
92 See supra note 82, p. 12.
93 Id.
fluidity in terms of seriousness, expertise, and focus. Committees are often unable to
finish their stated agenda by the time their term is over.

Eighth, most DRSCs do not have adequate research or support personnel. Though
committees do have their own staff from either the Lok Sabha or Rajya Sabha Secretariat,
such staff strength hardly compares to the number of staff members of individual
Congressmen, and congressional committees. The existence of adequate research staff is
even more crucial to a committee system with a high turnover. Not only do committees
not have their own research staff, individual Parliamentarians also do not get any
personnel, or allowance for personnel for conducting research. As a result, there is a huge
asymmetry of information between the executive and Members of Parliament.

Lastly, the organization and administration of the committees leaves much to be
desired. For one, there is no concept of creating subcommittees like in the US Congress.
Even though the rules clearly permit it, they are extremely rare, and certainly no
permanent subcommittees exist under the DRSCs. Most committees in the US House of
Representatives at least, have a specific oversight subcommittee as well. In the US
Congress, subcommittees do a sizeable amount of work compared to the main committee.
For example, in the House Committee on Financial Services, the subcommittees
published eighty out of a total of eighty-six reports between January and December
2011. Secondly, while a vote by a majority of the quorum is required for the conduct of

94 See supra note 91, Rule 263.
95 See, for example, Second Semi-Annual Reports on activities during the 112th Congress of the House
Committees on Financial Services, on Agriculture, Armed Services, and Budget.
the actual business, only a few Parliamentarians interested in the issue usually work within the committee.97

The present committee system in India is therefore far from ideal. The accountability mechanisms available to Parliamentarians in either House have already been examined to be far from ideal. The committee system, with its sector-based emphasis would be presumed to be the ideal forum for creating a complementary oversight mechanism. However, before these two institutions are examined in greater detail, the examination of delegated legislation merits discussion.

**Current monitoring of delegated legislation**

Delegated legislation (“regulations”) deserves discussion because it is the chief mechanism by which executive power is exercised. McCubbins, Noll and Weingast point out the problem elected representatives face in ensuring that bureaucrats comply with their policy preferences.98 They state that politicians delegate policymaking authority to bureaucrats as a matter of course. The problem is that politicians often lack the resources to monitor the performance of bureaucrats in compliance with their own policy goals.99 As we have seen earlier, Parliamentarians generally lack the enabling framework to monitor bureaucratic performance. Effective monitoring of regulations framed by bureaucrats is thus an essential part of an effective oversight framework.

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97 See *supra* note 46, p. 27.
99 *Id.* at p. 247. (They argue that bureaucrats depart from the policy choices in the absence of effective oversight. This is because of “personal preferences, derived from some combination of private political values, personal career objectives, and, all else equal, an aversion to effort, especially effort that does not serve personal interests.”)
Parent statutes in India circumscribe powers that have been delegated to the executive. They also state the manner in which Parliament will exercise a check on the rule-framing power of the government. For example, Section 48(2) of the Civil Liability for Nuclear Damage Bill (now passed) provides both general and specific rule-making powers to implement the law. Section 48(3) provides for the laying of any rules made under Section 48(2) before Parliament. This is a standard clause present in most laws stating that any rules under this statute shall be laid before parliament for a total period of thirty days of sittings of Parliament. Parliamentarians may agree to modify the rule by voting on it before the end of the next session (session after the one in which the thirty days expire). This has rarely, if ever happened. However, both Houses have a Committee on Subordinate Legislation that examines regulations tabled in Parliament.

Data collated by me indicates that the number of regulations “examined by the Lok Sabha Committee from February 2008 to December 2010 is around three percent of the total number of subordinate legislation laid before the Lok Sabha in the same period.” The government often agrees to modify the regulations after meeting with the Committees. For the 14th Lok Sabha (2004-09), the government accepted 83% of the recommendations made by the Lok Sabha committee. However, there is also a huge time lag between the initial report of the Committees and the response of the government. As a

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100 Bills are also required to contain a Memorandum on delegated legislation explaining the clauses delegating rule-making powers, and certifying that such delegation is of a normal character.
103 Anirudh Burman, Subordinate legislation in Parliament, PRS Legislative Research (unpublished), (February 25, 2010).
result, by the time the Action Taken Report is published an average time of six years has passed from the promulgation of the rule.\textsuperscript{104} Sadly, the Committee on Subordinate Legislation of the Lok Sabha was itself forced to recently observe that,\textit{One disquieting feature observed by the Committee in regard to the issue of statutory orders by the Government was the enormous delay in laying them on the table of the House thereby depriving the House of timely scrutiny of such Rules.}\textsuperscript{105}

It is apparent therefore, that even though specific committees on Subordinate Legislation exist, monitoring of subordinate legislation is ineffective.

This lack of effective monitoring is of critical importance to form an oversight framework especially because over time bureaucrats tend to gain greater experience over their domain.\textsuperscript{106} The information asymmetry between the executive and the legislature only gets exacerbated over time. Even in the absence of this asymmetry, it is arguable whether policy will be implemented more efficiently with greater legislative oversight. This conflict only arises if democracy and efficiency are thought to be competing, if not conflicting goals. In many cases this is undoubtedly true. The challenge is therefore to conceptualize a framework that can balance these two priorities.

In the US, regulations kept pace with the growth of regulatory agencies created through and after the New Deal period.\textsuperscript{107} Critics point to the problem of burdensome

\begin{flushright}
\textsuperscript{104} Id.
\textsuperscript{106} See supra note 98, p. 247.
\end{flushright}
compliance costs imposed by such regulations. At the very least, there is a significant
debate for and against such regulation. In 1946 the US Congress passed the
Administrative Procedure Act, which imposes numerous requirements facilitating wide
consultation and transparency. The Act requires a notice of the proposed rule to be
published in the Federal Register with a detailed description and other details. The
agency proposing the regulations also has to give interested persons a chance to
participate in the process by giving information. In 1981, President Reagan signed an
executive order that introduced various considerations to be weighed before new
regulations are framed. It also required a Regulatory Impact Analysis in which the costs
and benefits of every rule have to be weighed. Congressional oversight of regulations
mainly takes place within the committee system. This process will be examined in greater
detail later.

The UK Parliament also requires that regulations be laid before Parliament. Also, like India the procedure for laying of regulations can be divided in to both a
positive procedure and a negative procedure. Under the positive procedure, a positive
vote of both Houses of Parliament. Under the negative procedure, the regulation is laid in
a draft form, but may be revoked if either House of Parliament votes against it. These
and other procedures regarding the delegation of law making powers are codified under

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108 Id. at p. 255.
109 Administrative Procedure Act, 1946, (5 USC Subchapter II) available at
110 See supra note 107, at p. 255.
112 Also see supra note 107, at p. 259.
113 See infra note 114.
114 These consist of the vast majority of delegated legislation laid before Parliament, numbering about
1,100 a year. Rules laid under a positive procedure number about 200. Briefing: Delegated Legislation,
House of Lords, available at: http://www.parliament.uk/documents/lords-information-office/lords-briefing-
papers/15840HoLBriefing-delegated-legislation.pdf (last visited 1/15/12).
the Statutory Instruments Act, 1946. Thus, of these three countries examined, India is the only one without a specific legislation on the subject of delegated legislation.

**Overview of oversight mechanisms in other countries**

A comparative study of oversight mechanisms has to take into account institutions common across various jurisdictions as well as unique features that may be of interest for an Indian framework. Most analyses seem to analyze some common features. These are constitutional provisions, legislation, internal rules of the legislature, internal institutions and mechanisms of oversight, and external agencies supporting the legislature in its oversight function.\(^{116}\)

**A. US Congress**

A report of the Congressional Research Service lists various goals of Congressional oversight of the executive.\(^{117}\) I have already discussed many of them earlier in this paper. Of the remaining, some significant purposes are that of preventing “encroachment on legislative powers and prerogatives”, to assess whether the officials who have been delegated a particular role are capable of carrying out such role, to review the rulemaking process of government departments, and to investigate complaints and media critiques.


**Constitutional provisions and statutes**

The US Congress has the power to approve, reject or modify financial appropriations.\(^{118}\) No financial appropriation may be made without the authority of law. Additionally, the Congress can establish or abolish executive agencies and departments, and their functions.\(^{119}\) The US Constitution also gives Congress the power to confirm appointments to executive posts and impeach certain officers\(^{120}\) serving in the executive. The Indian Constitution vests these powers (except confirmation powers) with Parliament as well.\(^{121}\)

A number of laws grant general and specific authority to Congress and congressional committees to conduct oversight. The 1912 Anti-Gag Legislation and whistleblower protection laws give protection to those employed in the civil services who wish to petition Congress or contact congressional committees. Special provisions are also mandated for the intelligence community.\(^{122}\)

Specific statutes also mandate the committees to exercise oversight functions over the executive.\(^{123}\) These include the Legislative Reorganization Acts of 1946 and 1970, the 1968 Intergovernmental Cooperation Act, and the 1974 Congressional Budget Act.\(^{124}\) Commentators cite the 1946 Legislative Reorganization Act as one of the landmark legislation designed to “modernize” the Senate and the House of Representatives.\(^{125}\)

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\(^{118}\) See Kaiser, Olesezk, Rosenberg & Tatelman *supra* note 116, at p. 5.

\(^{119}\) *Id.*

\(^{120}\) The President of the United States, federal judges including those of the Supreme Court.

\(^{121}\) Constitution of India 1950, Articles 61, 112-117, 124.

\(^{122}\) See *supra* note 116, at p. 5-6.

\(^{123}\) *Id.*

\(^{124}\) The Act gave increased oversight powers to committees by allowing them to evaluate government programs either by themselves or to contract it out, or to require a government agency to do so. See *supra* note 116, p. 8.

mandates “continuous watchfulness” over the executive.\textsuperscript{126} Probably one of its biggest successes was to establish permanent staff for congressional committees.\textsuperscript{127} It also established the now named Congressional Research Service\textsuperscript{128} for assisting congressional committees. One of the Act’s foremost objectives was the reorganization of the committee structure.\textsuperscript{129} Davidson argues that though reorganization had very limited success, the Act was important since it stated committee jurisdiction in writing for the first time.\textsuperscript{130}

The 1970 Legislative Reorganization Act clarified oversight duties of congressional committees, and also required them to submit biannual reports on the oversight work undertaken by them. It strengthened the policy analysis role of the Congressional Research Service and expanded the duties of the Government Accountability Office. It also required that committees conduct a financial analysis of programs under their jurisdiction.\textsuperscript{131}

One example of a specific legislation providing for oversight on grounds of reducing regulatory barriers is the Small Business Regulatory Enforcement Fairness Act of 1996.\textsuperscript{132} The Act was passed because Congress found that small business bears a disproportionate share of regulatory costs and burdens. Inter alia, the Act provides for congressional review of any rules by a government department. The rule will not apply if Congress passes a joint resolution disapproving of the rule. As discussed earlier, this last mechanism is available within the Indian parliamentary system as well. Lastly, the

\textsuperscript{126} See \textit{supra} note 116, p. 7.
\textsuperscript{127} Id.
\textsuperscript{128} Renamed by the Legislative Reorganization Act of 1970. See \textit{supra} note 116.
\textsuperscript{129} See \textit{supra} note 125, p. 365.
\textsuperscript{130} See \textit{supra} note 125, p. 367.
\textsuperscript{131} See \textit{supra} note 116, p. 7-8.
\textsuperscript{132} Id. (Act is available at the website of the United States Small Business Administration: \texttt{http://archive.sba.gov/advo/laws/sbrefa.html}, last visited 1/18/12).
Government Performance and Results Act of 1993 requires “agencies to consult with Congress on their strategic plans, goals and results.”\textsuperscript{133}

\textit{Internal rules and mechanisms}

Both the House of Representatives and the Senate have their own rules on oversight to be conducted by committees and members. Members usually conduct investigations on their own initiative, sometimes in the form of response to the grievances of constituents.\textsuperscript{134} Oversight is primarily the work of congressional committees.\textsuperscript{135}

Most committees of the House of Representatives have general oversight functions.\textsuperscript{136} They have to assist the House in its evaluation and appraisal of the application of federal laws, and also the conditions that may necessitate the enactment of new legislation, or in making changes to existing legislation.\textsuperscript{137} Each committee has to review the laws and programs within its jurisdiction on a continuing basis. It also has to review the “organization and operation of Federal agencies” in-charge of executing laws and programs within the committee’s jurisdiction.\textsuperscript{138}

The rules require that every committee with more than twenty members shall have to establish a subcommittee on oversight.\textsuperscript{139} Alternatively, each committee will require each of its subcommittee to carry on oversight within its respective jurisdiction. There is a specific mandate for each subcommittee to review the impact or probable impact of tax policies on the subjects within its jurisdiction on a continuing basis.\textsuperscript{140} All committees are

\textsuperscript{133} See \textit{supra} note 110, pp. 221 – 227.
\textsuperscript{134} See \textit{supra} note 116, p. 13.
\textsuperscript{135} \textit{Id.}
\textsuperscript{138} Rule X, Clause 2(b)(1).
\textsuperscript{139} Rule X, Clause 2(b)(2).
\textsuperscript{140} \textit{Id.}
required to prepare a plan on oversight in the beginning of the year. The plan is then submitted to the Committee on Government Oversight and Reform as well as the Committee on House Administration. The rules spell out in detail considerations the committee should have while making their plan. These include coordination with other committees; review of specific problems with federal rules and regulations; review of all significant rules and regulations every ten years; and, examine proposals to eliminate wasteful or outdated programs. Apart from these, there are also specific oversight duties mentioned for each committee.

Each House committee can appoint up to thirty professional staff members. Staff members are assigned to the chairperson and the ranking minority member in the committee. Committee staff members are prohibited from engaging in any other work apart from committee business. The chairperson of the committee fixes the pay for staff members. Officers of a government department or agency cannot be appointed as professional staff without the permission of the Committee on House Administration. There is also a standing committee on Oversight and Government Reform that performs additional oversight duties.

The Senate also has its own procedure governing oversight. Specific oversight powers are given to some committees such as those on nutrition and agriculture. Most committees are generally required to prepare an evaluation of the regulatory impact of every bill or resolution on which it prepares a report.

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141 Rule X Clause 2(2)(d).
142 Id.
143 Rule X, Clause 9, at note 130.
144 Id. (The pay has to be uniform for all staff members.)
145 See supra note 116, p. 10.
Oversight processes take place in a variety of ways. Most of them are common to most constitutional democracies, though the contours of the process may differ. In the US, the main processes include the budgetary process, the authorization process, the appropriations process, the investigatory process, the confirmation process and the impeachment process. I discuss all but the last two below.

The budgetary process allows Congress to assess budgetary policy as a whole. Congress can also assess whether the proposed revenue generation and spending decisions are in line with the budgetary policy. Institutionally, the House and the Senate Committees on Budget, as well as the Congressional Budget Office are involved in this process. The authorization process and the appropriations process are two other important oversight related processes. The authorization process is a financial power that allows but does not guarantee federal agencies to make appropriations. The appropriations process actually sanctions money for a particular agency.

Both members and congressional committees conduct investigative oversight. While there is no explicit constitutional provision granting this power, it has been read in to the powers of Congress. Supreme Court decisions have also held this power to be inherent in the legislative process. The court has however stated that the investigative power can only be used in aid of Congress’s legislative function, and not for the sake of exposure alone.

**Power of contempt.** Different writers have different conceptions of the origin of this power. One stream of thought says that historically, this power flows from the power of

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147 See *supra* note 116, p. 16 – 22.
148 *Id.*
149 See *supra* note 116, p. 16-22.
150 *Id.* Also see *Eastland v. United States Serviceman’s Fund* 412 US 504; *Watkins v. United States* 354 US 187.
the British Parliament to punish for contempt.\textsuperscript{151} Another stream of thought traces this power to Congress’s power to legislate, and to ensure that its constitutional functions can be carried out.\textsuperscript{152} However, Congress codified this inherent power in 1857 and now has the power to punish for criminal contempt. Any person failing to produce documents before either chamber or a committee when asked to do so, or any person refusing to answer questions is punishable by a fine and imprisonment for up to one year.\textsuperscript{153} Since 1975, twelve cabinet-level or senior executive officials have been held for contempt.

Congress also has the power of civil contempt. A complaint can be lodged in a federal district court against any person who refuses to respond to a subpoena. If the individual still does not comply, a trial is initiated. This remedy is available against government officials only,

“if the refusal to comply is based on the assertion of a personal privilege or objection and is not based on a governmental privilege or objection the assertion of which has been authorized by the executive branch of the Federal Government.”\textsuperscript{154}

Therefore, refusal to comply based on official reasons or official authorization cannot be a subject of a civil suit for contempt.

\textbf{B. UK Parliament}

The Indian parliamentary system is based heavily on the Westminster model. Many institutional functions are therefore similar. Similar to India, and markedly different from the US,

\textsuperscript{152} Note, Congressional Power to Punish for Contempt, 30 Harv. L. Rev. 384, 384-86 (1917).
\textsuperscript{153} See \textit{supra} note 116, p. 33-34.
\textsuperscript{154} Senate Actions, S. 1365 of Title 28 (Judiciary and Judicial Procedure) Part IV Chapter 85 of the United States Code Annotated, 28 USCA S. 1365. Also see \textit{supra} note 116, p. 34.
National policy is made by the governing party's leaders, subject to the influence of their back-benchers and their supporters outside parliament... The other major tasks that parliament has traditionally performed - legislation, the redress of grievances, the grant of supply — are now performed in parliament rather than by it.  

In view of this similarity, it may be useful to understand the theoretical underpinnings of the parliamentary system under the Westminster model. As in India, it is the government in the UK that controls Parliament. Members of Parliament are elected on party platforms, and it is in their self-interest to vote with their party. Therefore, if a government has a real majority is reasonably sure of securing the passage of its agenda in Parliament. In Sir Jenning’s estimation Parliament thus serves the purpose of reflecting the sentiment of the people at a given point of time. This, according to him is the main function of Parliament: to hold the government accountable to the electorate. In his highly regarded work however, Sir Jennings does not look beyond this formal measure of accountability. While important policies may be debated on the floor of the House, the increase in the role of the state in day-to-day administration renders this mechanism inadequate for really holding Parliament accountable.

Historically, Parliament’s resistance to reform has also exacerbated this concentration of power in favor of the British executive. This has arguably been due to strong commitment to ministerial responsibility: “Parliament severely underestimated the subsequent effect that the evolving state and mass parties would have on the convention

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157 Id. at p. 474.
and so it became the political rationale and procedural logic around which an expanding system of government was structured.\textsuperscript{159}

\textbf{Committee system}

The UK Parliament has three distinct types of committees: general committees, select committees, and joint committees. In addition, Grand Committees allow parliamentarians to debate issues affecting their region or constituency.\textsuperscript{160} Select committees in the House of Commons perform the administrative oversight of government departments. All committees examine issues related to the spending, policies and administration of departments under their jurisdiction.\textsuperscript{161} General committees are usually formed to discuss legislation.\textsuperscript{162}

In India as in the UK, the role of Parliament is primarily to provide a forum for the government to defend its position and for the opposition to explain its case against the government.\textsuperscript{163} Committees were therefore conceptualized as an avenue where investigations about policy alternatives could be carried out for debate in either House. This would enable Parliament to put forward alternatives to government policies and inform public opinion while testing the government as well.\textsuperscript{164}

\textsuperscript{159} Id. at p. 25.
\textsuperscript{160} Grand Committees, How Parliament works, \textit{available at} http://www.parliament.uk/about/how/committees/grandcommittees/ (last visited 1/19/12).
\textsuperscript{161} Select Committees, How Parliament Works, \textit{available at} http://www.parliament.uk/about/how/committees/select/ (last visited 1/19/12); Also see House of Commons, \textit{Select Committees: Brief Guide}, House of Commons Information Office (2011): There are currently 19 select committees. The number may change if the departmental organization changes.
\textsuperscript{162} General Committees (including Public Bill Committees), How Parliament works, \textit{available at} http://www.parliament.uk/about/how/committees/general/ (last visited 1/19/12).
\textsuperscript{164} Id.
The main difference between the US Congress and the UK Parliament (and the Indian Parliament) is in the use of the committee system as a tool of oversight. Due to various institutional and structural constraints, committees cannot “challenge the authority of the parliamentary executives.” Garrison Nelson cites scholarship stating that the contrast between committee strength is related to the contrast between the strength of political parties. In UK political parties are strong and the committee system is weak. In the US, the inverse is true. He challenges this notion on empirical grounds and states that the analysis is limited by a study of only two legislatures. His argument based on empirical studies of legislatures cited by him shows the viability of a strong role for committees in countries with strong party systems.

While this argument is certainly true, he refers to the strong committee system in the US as a protective mechanism against usurpation of democratic processes. This proposition is true to a certain extent but does not highlight the benefits of the committee system in the US compared to UK and India. Though these two democracies both have executive responsibility to the legislature, this fact cannot be used as an excuse for justifying the weak oversight practices of the committees within their legislatures.

Other criticisms regarding the functioning of the UK Parliament have also been made more recently. A commission set up by the Hansard Society published its report in

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166 *Id.*
167 See *supra* note 165, p. 126 (quoting from Jewell and Patterson, *The Legislative Process in the United States*, (1966)).
168 He also cites the work of other scholars to prove examples to prove his argument. Italy and Japan are cited as examples of countries possessing both strong leaders and strong committees within their legislatures. Nelson, *supra* note 165, p. 127.
2001. It stated that parliamentary scrutiny over the government is “neither systematic or rigorous”. It further observed that parliament has generally been unable to hold the executive accountable, and to ensure that the government acts on the recommendations made by Parliament. It notes correctly that the expansion of the modern government has created a situation where Parliament alone cannot ensure accountability across a wide range of governmental activities. The report notes that this challenge can be overcome to some extent by utilizing the professional expertise of governmental and independent investigative agencies and commissions. Additionally, the executive is also subject to many new performance indicators, which could be utilized by parliamentarians. It also focuses on the need to reform the select committees in Parliament. One important recommendation in this regard was to give committees a set of core duties. In addition to creating greater systematization within select committees, it should also increase the work required of parliamentarians, leading in turn to a demand for better staffing resources.

Non-committee mechanisms of oversight include the question time, debates, and Early Day Motions. The Prime Minister as well as other ministers answer oral questions about once every sitting month. The UK Parliament also has a Comptroller and Auditor General which aids the parliament’s Public Accounts Committee in ex-post facto financial oversight of government.

172 Id. at p. 1.
173 See supra note 171, p. 2.
174 Power, supra note 171, p. 5-6.
C. South Africa.

South Africa’s constitutional framework is interesting from a comparative perspective as an example of a parliamentary democracy constitutionally mandating the legislature to perform oversight of the executive. It is also the framework of a developing country with a new democracy and a detailed written constitution. For these reasons, it appears to be starkly relevant yet different in comparison to the Indian Constitution that gives only implicit recognition to the functions of parliament by listing out procedures.

South Africa is a parliamentary democracy where the President is both the head of the executive and the head of the state. However, he is elected from among the lower house and appoints the cabinet.\(^\text{177}\) It also has a bicameral Parliament. Article 55 of the South African Constitution explicitly provides that the National Assembly (lower house) should ensure that all departments of the executive are accountable to it, and that it should maintain oversight of both departments of the executive, and any exercise of power by it.\(^\text{178}\) The Constitution also specifies the powers of the National Assembly and its committees to summon witnesses, conduct hearings and take evidence.\(^\text{179}\) It also allows cabinet ministers and officials to attend a meeting of the National Council of Provinces (upper house).\(^\text{180}\)

Apart from these, the legal framework of the country also provides for Parliament’s role in appointing senior government officials, representation of parliamentarians on

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\(^{179}\) Constitution of South Africa, Art. 56.

\(^{180}\) Constitution of South Africa, Art. 66.
government commissions, and the appointment of a Public Protector (ombudsman) who is appointed by the President on the recommendation of the National Assembly. The committee system also functions in a manner similar to India and the U.K., and specific portfolio committees oversee the implementation of existing laws.¹⁸¹

In March 2008, a Task Team on Oversight and Accountability comprising members of both houses of Parliament submitted its final report.¹⁸² It stated that contrary to the conventional adversarial definition of oversight under the Westminster model, the South African understanding would be a more institutional one. It understood oversight to mean, “the informal and formal, watchful, strategic and structured scrutiny exercised by legislatures in respect of the implementation of laws, the application of the budget, and the strict observance of statutes and the Constitution.”¹⁸³

The main oversight mechanisms within the Parliament include committees, questions, budget votes, and general motions. However, the report also lists out departmental reports, strategic plans, the department’s record of compliance with these plans and applicable legislation, committee reports on oversight and legislation as important tools of oversight.¹⁸⁴

One of the important recommendations the report makes is regarding the manner of reporting by committees to the houses of Parliament. Currently, the Speaker refers annual reports from all departments to the relevant committee. Public hearings should also be conducted to gain inputs regarding the areas covered in the annual reports. The

¹⁸³ Id.
¹⁸⁴ See supra note 182, Chapter 3.
report recommends that when a response on an annual report is required from a minister, the same should be given on the floor of the House and addressed to the Speaker.\textsuperscript{185}

**Taking stock of oversight in different countries.** The three countries studied above differ in vastly in the nature of their constitutions, and the nature of their national legislative institutions. However, all of them seem to depend in varying degrees on the strength of the committee system, and the ability of individual legislators to question the government on the floor of the house. This would be the right point to examine the effectiveness, and the effects of such oversight mechanisms. Though the scholarship on oversight and its effectiveness is mostly based on the US system, many arguments can be held to be equally valid for other countries based on our comparative understanding.

The next part of this paper examines components of an oversight framework for India’s parliamentary system. It concludes the paper with a bill drafted to reshape the framework of parliamentary oversight in India.

**Part III**

This part is divided into two parts. Part A looks at institutions within Parliament first as independent components, and then analyses the consequences of how oversight would function with a synthesis of these components. Part B proposes legislation aimed at giving effect to the solutions proposed in Part A.

\textsuperscript{185} See supra note 182, Chapter 4.
Part A

This portion proposes a specific, and in-depth reworking of the oversight framework within the Indian Parliament. It is thus necessary to establish what specific objectives of such an effort should be.

Scope of oversight in India

Scholars have defined oversight in varying forms. Rockman categorizes these definitions on the basis of “how many legislative activities it is seen to encompass; it also depends on the types of controls and supervision placed on the executive, the instruments employed, and the stages of legislative intervention.”\(^{186}\)

At its broadest possible level, any parliamentary activity could be oversight related.\(^{187}\) Notices calling for a discussion of matters of urgent national importance also seek to give policy direction to the government. In this paper, the emphasis is to look at oversight mechanisms over and above those available to members on the floor of either House. However, most oversight mechanisms have linkages with one another. A strong committee system with effective monitoring of the bureaucracy may change the tenor of the Question Hour, as it exists. These linkages need to be taken account of.

McCubbins and Schwartz highlight two contrasting approaches of police patrols and fire alarms.\(^{188}\) The former refers to the method of legislators continuously monitoring the performance of executive departments. They argue that very little of such monitoring actually happens in practice. Therefore, a system of fire alarms is much more effective. Legislatures can design a system that encourages the electorate to sound a fire alarm.

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\(^{186}\) See Rockman, \textit{supra} note 18, at p. 416-17. Also see Stapenhurst and Pelizzo, note 12, at p. 3.

\(^{187}\) See Rockman \textit{supra} note 18, at p. 417.

every time the executive acts improperly. This implies a much smaller cost of monitoring since the electorate will be conducting most of the oversight. Moreover, bureaucrats, knowing they will suffer consequences for the sounding of such fire alarms, will stay faithful to legislative intent.

While fire alarms lower costs of monitoring, structuring an efficient way to sound off fire alarms remains difficult in India. Moreover, the political consequences of sounding off fire alarms remain mixed, at best. It may thus be better to invest in a “police patrol” formulation of ex-ante oversight that allows continuous monitoring of the executive. This would hopefully obviate or lessen the need for sounding off fire alarms.

The other issue to be considered is the balance between strong oversight mechanisms and ensuring adequate executive insulation. The ability of the executive to implement policy objectives is important for representative democracy to succeed. Oversight mechanisms should not become politically expedient tools to defeat this process. We have already seen how structural defects incentivize Parliamentarians to adopt disruptive tactics and further reduce the effectiveness of Parliament.

This issue is central to the design of an oversight framework for India. The success of oversight mechanisms also depends on what structural context political institutions are located in. The proposed framework for oversight should enable the fulfillment of these specific objectives.

The first such objective is to drastically increase legislative input into the creation of legislation and policy-making. While it would not be politically or structurally feasible to make incorporation of such inputs mandatory, structural mechanisms can ensure that the executive is forced to give greater consideration to inputs from Parliament. This would
enable Parliament to fulfill one of its least contentious roles i.e. creating legislation and policy by providing for ex-ante scrutiny. A second objective is to ensure compliance with relevant laws. This would include both departures from established policy and abuse of discretion, as well as clearly illegal acts. This function is a derivative of the first, since passing laws gives the power to ensure compliance with the same.

The legal framework for improving oversight should begin with a definition of oversight balancing the issues raised above. The House Rules of the US House of Congress clearly define the oversight functions of Congressional committees. These are to assist the House in the application of federal laws, to examine conditions that may necessitate the drafting of new legislation, and to analyze required changes in federal laws.  

A framework for improving parliamentary oversight in India should look at the following issues to ensure the above-stated objectives are met:

A. Review of the functioning of the committee system.

B. Oversight mechanisms in both Houses.

C. Manner of oversight over subordinate legislation.

D. Incentive structures for Members of Parliament to conduct oversight.

In the following pages, these issues are dealt holistically as part of the operation of the committee system and Parliament as a whole.

The Committee system

The departmentally related parliamentary standing committees should play a central role in the oversight function of Parliament. Though this does not in any way take

189 House Rules of the House of Representatives, Rule X(2)(a) and (b).
away from the importance of accountability in the Lok Sabha and Rajya Sabha, parliamentary committees afford the best opportunity for unbiased, deliberative scrutiny of the executive. In India, committees function in a largely bipartisan manner, but numerous issues related to their functioning have been highlighted in Part I. These issues need to be addressed by understanding how to modify structural elements to increase the capacity for conducting oversight, and also making sure oversight leads to greater accountability.

**Committee structure**

The capacity for oversight is obviously a primary issue while trying to reorganize the institutional framework for oversight. It is a question of concern whether committees at present are adequate in number to exercise oversight over the large number of government departments. Many committees presently have more than one ministry under their purview. Each ministry in turn, has more than one department functioning under it. The capacity to conduct oversight is therefore one of the first issues to be dealt with when trying to devise a new framework for oversight. However, it is equally important to consider the fact that most Members of Parliament are members of at least one parliamentary committee. Creating new committees from within the same number of parliamentarians would not necessarily lead to more effective oversight.

The creation of new committees does serve to attach symbolic importance to Parliament’s determination to exercise greater accountability over the executive. Smaller ministries may receive lesser attention within committees tasked to look at multiple ministries. By creating specific committees to look at every ministry, Parliament would in effect signal its intention to look closely at every ministry of the government. However,
in the absence of adequate number of Members who could devote their attention to their responsibilities to their committee work, such expansion would be of limited use.

It therefore makes more sense to retain the existing number of committees and improve capacity for oversight around them.

Sub-committees

Sub-committees in the US Congress perform a major portion of the total work conducted by Congressional committees. Of particular interest is the existence of oversight sub-committees within most Congressional committees. Though standing committees in India also have the power to create ad-hoc subcommittees, there are no permanent sub-committees existing currently. The present system creates significant pressure on committee members. Every meeting of the committee on a particular issue requires the presence of every member, which arguably impedes both their ability to specialize, and also their constituency work. The creation of sub-committees would also promote closer interaction of a smaller group of committee members with members of the executive, which could arguably lead to greater deliberation on issues. Importantly, sub-committees would be able to develop a better institutional memory of government departments that the committee sitting as a whole may be able to.

Importantly, committees may be able to divide functional responsibilities between the standing committee and its sub-committees. The entire committee may have more

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190 See for example the report of the Committee on Agriculture of the US House of Representatives titled “Second Semiannual report on activities during the 112th Congress”. The subcommittees held thirty out of forty-seven hearings during the period covered in the report. Also see similar reports of the committees on Armed Services and Financial Services.

191 House Rules of the House of Representatives, Rule X(5).

time to focus on policy prescriptions for the government, while the sub-committees would be able to conduct more focused scrutiny over their respective subject areas. Therefore, a legislative framework for parliamentary oversight should provide for the division of functional duties of shaping policy and conducting scrutiny.

In the US, the Legislative Reorganization Act of 1970 and consequent developments significantly altered the interrelationship between the standing committee’s chairperson and the subcommittees. One significant development was the mandatory referral of all bills to the relevant subcommittees. While it is appropriate that subcommittees with jurisdiction over the relevant department study legislation referred to the standing committee, a legislative framework should not curb the flexibility available to the chairperson of the committee. There may be situations where more than one subcommittee may be required to study the bill. There may also be exigent situations where detailed analysis by a subcommittee is not possible. Supplementary demands for finances are one such example. In such cases, the chairperson should have the flexibility to find the most efficient allocation of committee resources. The framework on oversight proposed here is not intended to upend the role of the committee chairperson and make subcommittees the main drivers of oversight. Subcommittees are intended to complement the work of standing committees.

A legislative framework should also mandatorily provide for the creation of subcommittees covering every department of the government under the committee’s jurisdiction. Committees should be free to decide the number of sub-committees to create, and the distribution of departments within different sub-committees. The emphasis

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is on the provision for scrutiny of all government departments by sub-committees. Giving discretion to the committees on this issue helps them retain the flexibility to re-organize sub-committees with corresponding changes to government departments. Broadly, changes in the executive should be paralleled by changes in sub-committee organization and jurisdiction unless there are good reasons for doing otherwise.

Based on the structure of Congressional committees, one may argue the case for having one sub-committee dedicated to oversight in all committees. However, such a structure may be superfluous in the Indian context for multiple reasons. Primarily, committees in India do not frame legislation. Their main role is to ensure accountability. The committee as a whole, and any proposed sub-committees would be engaged in scrutinizing the administration anyway. A separate oversight sub-committee would in most likelihood lead to jurisdictional overlaps. If at all, there is a case for creating a separate sub-committee on financial oversight in all committees. Beyond facilitating oversight of departmental finances, it would free other sub-committees to focus on a greater range of issues.

Another reason for having a financial oversight sub-committee is the diversity of methods by which the government spends its annual budgetary allocations. The central government distributes money collected through revenues to the states through a variety of mechanisms. It also undertakes a number of infrastructural or welfare related projects directly. Financial subcommittees should also mandatorily scrutinize whether

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194 See the reports of the Finance Commission of India. The Thirteenth Finance Commission report mentions various methods of distribution of revenues. These include direct apportionment of revenue collected based on a variety of factors, grants-in-aid to states in need of assistance, as well as direct financial allocation to local bodies. Available at [http://fincomindia.nic.in/ShowContentOne.aspx?id=28&Section=1](http://fincomindia.nic.in/ShowContentOne.aspx?id=28&Section=1) (last visited 3/15/12).

195 Generically termed “Centrally Sponsored Schemes”, the expenditure on these may be made entirely by the central government or in conjunction with state governments. Examples include the National Rural
the expenditure of the government is in keeping with the recommendations of statutory and constitutional bodies such as the Finance Commission of India. A sub-committee on financial oversight would enable greater parliamentary understanding of these allocations, and also their scrutiny.

It is important to note that sub-committees would not be able to adopt reports or motions on their own. The adoption of any report, finding or recommendation of a sub-committee would have to be voted on by the entire standing committee. This is essential since the sub-committee is essentially designed to perform a delegated function as an agent of the whole committee. While it may have functional autonomy, it should not be vested with powers that are to be exercised by the whole committee.

The three financial committees in Parliament have specific oversight duties that are not specific to particular ministries. They exercise financial oversight over the executive as a whole. The creation of sub-committees within these should be left to the discretion of the committee chairpersons, as is the case presently. However, the general changes being proposed in the following portions that are applicable to standing committees should also be applicable to them.

Some scholarship in the US has expressed concern over the subcommittee system. The chief concern is whether, “…subsets of members, nominally equal in decision-making authority, will dominate the outcomes of their parent body”¹⁹⁶ This concern is pertinent in the US because of the passage of structural changes since the 1970s that empowered subcommittee chairpersons and ranking minority members at the cost of the

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standing committee chairperson. However, the same framework is not being considered for the Indian Parliament. As will be noted, committee chairs will continue to exercise significant powers over subcommittees that have devolved to subcommittees within the US system. Moreover, Hall and Evans conclude by stating that generalizations about “government by subcommittee” are exaggerated and though subcommittees do play a leading role in the standing committee’s eventual decision on subjects within their jurisdiction, this influence varies from case to case and committee to committee.

Subject-specific sub-committee on regulation

Parliamentary scrutiny of subordinate legislation is essential for many reasons. One of the most well known explanations provided by McCubbins, Noll and Weingast is the moral hazard problem i.e. administrative agencies can often subvert legislative intent by choosing a policy option different from the ones behind the parent legislation. Since politicians devolve considerable policymaking power to bureaucrats, ensuring that legislative intent is met requires serious consideration. This is especially so since politicians have limited resources to monitor bureaucrats. Moreover, as Kathleen Bawn argues, analyses of Congressional control over the bureaucracy have also underestimated the control exerted through statutory control. Additionally, fire alarm systems may be required.

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197 These include the power to choose the number and composition of subcommittees. See Hall and Evans, supra note 196, p. 336.
198 See supra note 196, p. 350.
200 Id.
created in legislation itself\textsuperscript{202}, allowing parliamentary committees to focus on police patrolling in the routine course of business.

As has been noted earlier, Parliament is unable to pay sufficient attention to subordinate legislation and independent regulators. The resolution of this issue requires such oversight to be located within the committee system. This is essentially because focused, deliberative discussion on either subject is not feasible on the floor of the Houses. It is also because while both subordinate legislation and the work of independent regulatory agencies require scrutiny, discussion on the floor of the House is not suited to providing in-depth scrutiny. Additionally, the Parliament meets for very short periods of time during the year, further constraining the list of subjects that may be discussed.\textsuperscript{203}

While parliamentary procedures specify the manner in which subordinate legislation is to be considered and modified on the floor of both Houses\textsuperscript{204}, this is seldom if ever, used.

As elaborated in Part I, the US Congress has enacted laws governing the process of rule framing by administrative agencies.\textsuperscript{205} These govern the manner of Congressional oversight over subordinate legislation. The federal agency promulgating a regulation must submit it to each house of Congress. Along with the regulation there must be among

\textsuperscript{202} Id. at p. 104.
others, a cost-benefit analysis of the regulation. Additionally, the regulations come into force after they are placed before Congress.\textsuperscript{206}

In India, all subordinate legislation is laid in Parliament. These come into effect on the date they are notified by the executive. Any modifications made based on the recommendations of the committees on Subordinate Legislation apply prospectively and not retrospectively. Additionally, the Committees on Subordinate Legislation examine only a select few of the total number of subordinate legislation tabled in Parliament.\textsuperscript{207} It is important to note that in the US Congress, all subordinate legislation is automatically referred to the standing committee with jurisdiction on the subject.\textsuperscript{208} It would be more feasible to abolish the Committees on Subordinate Legislation and mandate the creation of sub-committees on regulatory matters in every committee. Subject specific parliamentary committees do undertake oversight of regulations in other countries as well. There are three major advantages of such reorganization.

First, institutional memory would facilitate scrutiny. The standing committee examining the subordinate legislation also examined the parent law. This would provide a degree of expertise on the subject matter that an independent committee on subordinate legislation does not possess. Secondly, the development of institutional expertise over time would lead to greater efficiencies in scrutiny of subordinate legislation. Subcommittee members would gain greater specialized experience in scrutinizing sector-specific regulations. Lastly, a much greater number of committees would be examining subordinate legislation. This should lead to a quantitative increase scrutiny of subordinate legislation.

\textsuperscript{206} Id.
\textsuperscript{207} See Burman supra note 103.
\textsuperscript{208} Congressional Review Act, S. 801.
It is also proposed that the sub-committee’s examination of subordinate legislation involve consultations with the general public. This should be conducted in a manner similar to the existing arrangement for holding consultations with respect to legislation. An exception may be made in cases where the department issuing the regulations has already solicited public feedback. In such a case, all public comments received by the department should be made available to the sub-committee as well.

Giving this sub-committee the power to oversee independent regulators may be trickier. For one, it is debatable whether the legislature should have a say in the functioning of regulators. A government elected by a majority should ideally set policy objectives of a regulator in a parliamentary democracy. However, legislatures also have the right to ensure that the law they have enacted is complied with. Conflict may arise in cases where the parent law does not mention any clear regulatory objectives, and the government’s policy objectives differ from the opinion of a parliamentary sub-committee. Under the present statutory framework, this conflict would arise in almost every case the sub-committee does not agree with governmental policies.

At the same time, the oversight objective of ensuring regulators comply with the law is equally important. Therefore, powers vested in the sub-committee for overseeing regulators need to be clearly defined. Functionally, the legislature should be empowered to oversee whether the regulatory body complies with laws enacted by Parliament. From a separation of powers perspective, it should not be able to second-guess policy-making unless the implementation of such policy is clearly in violation of an existing law. This delineation should be clearly defined in the proposed legislation.
Vesting the sub-committee with specific oversight powers with limited jurisdiction to subjects covered by the enacting statute is one feasible solution. Under most existing laws this would cover issues such as the composition of the regulatory body, the qualifications of regulators, the framing of subordinate legislation establishing the regulatory body (but not regulations framed by the regulator), and the regulator’s compliance with statutory provisions and applicable laws.²⁰⁹

Important limitations must apply even to these provisions. First, the appointment and qualifications of regulators should not be challenged if six months or more have elapsed since their appointment. Allowing an indefinite period for such a challenge could potentially cripple regulatory independence. Second, most enacting statutes confer powers on the government department responsible for establishing the regulator by listing subjects on which subordinate legislation may be framed.²¹⁰ While these should be within the sub-committee’s jurisdiction, jurisdiction over regulations framed by the regulators should be limited only to examining illegality. Sub-committees should be expressly prohibited from examining any other ground, especially rule-making by the regulator in compliance with directives from the parent ministry.

Finally, the sub-committee should not be empowered to investigate or make recommendations regarding the budgetary allocation for regulators. The reason for this is simple: the power to scrutinize the use of allocated funds should not be misused. The executive sets the policy goals of regulators in a parliamentary system, and committees should not subvert these through misuse of their oversight powers. Any allegations of financial impropriety by regulators should be scrutinized only after a two thirds of the

²⁰⁹ For example, look at Sections 7, 8, 53D, 53E and 63 of the Competition Act, 2002.
²¹⁰ See Section 63 of the Competition Act and Section 35 of the Telecom Regulatory Authority of India Act, 1997.
entire standing committee has agreed that there is a prima facie case for such scrutiny. The sub-committee may then conduct the scrutiny only on the grounds the entire committee has approved.

The interrelationship between an independent regulator and the relevant ministry or department deserves consideration. While most enacting statutes empower the concerned ministry to establish the regulator\textsuperscript{211}, they do not comprehensively detail the functional relationship between a regulator and the ministry. They do not for example provide guidelines on when ministerial or departmental decisions can overturn decisions made by a regulator. In the alternative they vest an absolute right with the central government to supersede the regulator. Many laws state that the decision of the central government on what constitutes a policy decision will be final.\textsuperscript{212} This absolute right to make a judgment on what constitutes policy is problematic. These lacunae create impediments in the creation of a coherent regulatory structure, and also a loophole allowing rent-seeking activities.

Parliament undoubtedly has the power to frame legislation to clearly spell out these duties. It is debatable whether parliamentary committees should enjoy the power to scrutinize individual instances where issues regarding the relationship between independent regulators and the executive arise. Such power would not be exercised in pursuance of any legal provision. However, nothing prevents a sub-committee for proposing general standards that may be voluntarily accepted by regulators and government departments, or from recommending the need to legislate on such standards.

\textsuperscript{211} Id.
\textsuperscript{212} See Section 25(2) of the Telecom Regulatory Authority of India Act, 1997, and Section 55 of the Competition Act, 2002.
A legislative framework on oversight must ensure that sub-committees study this issue on a continuous basis. This may be done by ensuring sub-committees have reporting requirements regarding their work on the subject, as well as the response of the government. Reporting requirements with regard to this issue as well as other functions are dealt with in the following portion.

_Term-limits on committee membership_

Most standing committees have twenty-one members from the Lok Sabha and ten members from the Rajya Sabha.\(^{213}\) All standing committees as well as some others\(^{214}\) are presently re-constituted every year.\(^{215}\) The agenda of many committees is often not finished before the expiry of their term. Institutionally, an annual turnover also restricts sector specific expertise developing within committees.

It would be better to make the term of a committee co-existent with the term of the executive. That is, all committees would ordinarily be constituted only after a general election. In the case of the Rajya Sabha, this rule would have to be modified since one-third of the members retire every two years. This can easily be remedied by providing that only new members of the Rajya Sabha shall be accommodated within committees with existing vacancies. Existing procedures of Parliament provide that no member shall be appointed to a committee if he/ she does not want to it.\(^{216}\) In such a case appointments should be made only if there are vacancies.


\(^{214}\) Public Accounts Committee, at: [http://164.100.47.134/committee/committee_information.aspx](http://164.100.47.134/committee/committee_information.aspx) (last visited 3/14/2012).

\(^{215}\) See Abstract No. 15 titled “Parliamentary Committees”, at note 178.

This proposal would ensure that a committee is ordinarily reconstituted every five years. Within this framework, the sub-committees should have tenures of two years each. This structure is envisioned to balance the need for expertise within sub-committees, as well as creating a knowledge base of different sectors within the standing committee. This would ensure that members have adequate time to understand their specific sub-committee work adequately. Additionally, it would ensure that a wide pool of members within the standing committee have knowledge of a particular sector. The purpose of this design is to promote technocratic discussion both within the sub-committees and the standing committees.

Similarly, chairpersons of sub-committees should have a tenure co-existent with the tenure of the sub-committee. However, it is desirable that the chairperson of the standing committee changes at least once during its tenure. This would aid the infusion of new ideas in the running of the committee, and also aid political parties in rewarding a greater number of their members. While the latter objective does not fit in well with institutional goals of standing committees, the design proposed above would significantly reduce the number of parliamentarians being rewarded with leadership positions within Parliament. This may in turn make the proposed reforms politically impractical.

*General oversight powers*

The nature of oversight parliamentary committees perform is central to a discussion of oversight powers. Broadly, committee oversight activities can include continuous ongoing scrutiny of executive functions, or specific ad hoc investigations. The
US Congress performs both these functions. A discussion of oversight powers must therefore first debate the efficacy of the pre-existing oversight powers of parliamentary committees, and then examine whether and in what form investigative oversight as understood in the US should be incorporated within the Indian framework.

Standing committees presently enjoy limited powers to call for documents and witnesses. For example, the government may deny them access to documents covered under the Official Secrets Act. As regards witnesses, committees can ask any person to testify before them. However, committees themselves enjoy no contempt powers to ensure such testimony. Such power has to be exercised by reference to the Speaker/Chairman of the House.

Significantly perhaps, the onus is on the committee to request access to documents and other relevant evidence. This often impedes effective scrutiny since members do not have adequate information on what documents to request access to. One of the first changes required is therefore to mandate that the government undertakes maximum disclosure on its own, rather than wait for the committee to request for additional information.

The scope of such “maximum disclosure” is obviously contentious. There are parallels to the debate concerning disclosure required under the Right to Information Act. Government officials are wary of disclosing certain kinds of information such as notes made on files, claiming they can be misused to harass officials, therefore impeding

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217 See generally, Morton Rosenberg, supra note 31.
219 See Rules of procedure, Lok Sabha, R. 202.
220 The Act enables citizens to claim access to any piece of information that is not otherwise classified as secret under other applicable laws.
discretionary decision-making. In our immediate context, officials would therefore be much more comfortable providing information only as demanded. However, if the government is compelled to provide maximum disclosure defined in broad and general terms without the risk of a disproportionate penalty, there should not be a serious impediment to governmental decision-making.

The argument in favor of making such disclosure from a separation of powers perspective has been made clearly in literature on the subject in the US. The reasons for doing so may be attributed to the constitutional delineation of executive and legislative powers. The US Congress is presupposed to have a right to access all information necessary to carry out its functions properly. Certainly, the same argument is equally applicable to the Indian Parliament.

One important tool for ensuring its access to information from the executive is the subpoena power. The US Congress vests committees with the power to issue subpoenas. The subpoena power is an important tool of investigative oversight. US Courts have generally construed the subpoena power of Congress broadly. The only limitations on such power are that the subpoena should be necessary for Congress to carry out its lawful functions, the committee issuing the subpoena is authorized to

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223 US Const., Art. I & II.
224 Rule XXVI(I) of the Senate Rules and Rule XI(2)(m)(I) of the House Rules, as mentioned in Rosenberg supra note 31, pp. 8.
225 Id.
conduct the investigation, and the materials sought by the subpoena are essential for carrying out the enquiry.227

The importance of subpoenas as an instrument for ensuring access to evidence from the executive may vary depending on whether evidence is required for specific investigations, or for a routine exercise of oversight powers. Therefore, at this juncture it is important to discuss the viability of investigative oversight in the Indian context.

The Indian parliament does conduct investigative oversight by establishing Joint Parliamentary Committees on specific issues.228 These committees are conferred subject matter jurisdiction and investigative powers through resolutions passed on the floors of both Houses. Such powers are however, largely similar to powers ordinarily enjoyed by standing committees.229 A more significant consideration however rests on the difference between the parliamentary and presidential systems of government. In the US, lack of ministerial responsibility arguably creates a clearer justification for investigative oversight. Such a power would be required to ensure laws passed by the Congress are implemented properly.230

This argument has less credence in a parliamentary system since the government is directly responsible to Parliament. Since there is no divided government, investigative

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227 Bernard Bergman v. Special Committee on Aging 389 F. Supp. 1127(1975)
230 See McGrain v. Doherty 273 US 135 (1927) and Sinclair v. United States 279 US 263 (1929) (where the US Supreme Court upheld the investigative powers of Congress as necessary to obtain information for legislating effectively. In Watkins v. United States 354 US 178 (1957), the Supreme Court also declared Congress’ broad power to include the administration of existing laws as well as to check alleged acts of corruption and mismanagement).
oversight on a pattern similar to the US Congress may dilute the principle of ministerial responsibility.

Apart from this dilution of the formal principle of ministerial responsibility, sound reasons emerge once we examine the process after a committee has determined that a member of the executive has acted illegally. Once a committee finds a minister or a government official guilty of wrongdoing, appropriate action would have to be taken by the government or Parliament, or both. If Parliament does not consider the government’s response to be adequate, it may try and act on its own. In extreme cases, opposition members may bring a motion of no-confidence against the government. The result, regardless of the factual circumstances, depends on whether the government commands or can negotiate a majority in the House. Consequently, the outcome is predicated on political negotiations rather than factual circumstances. The question is whether it is desirable to alter this structure.

It may be better to design an outcome where a finding of wrongdoing by a committee mandates investigation into such actions by government investigative agencies. Structurally, this would be least disruptive of the separation of powers currently existing within the Indian parliamentary system. Since action by investigative agencies is mandated, there would be no opportunity for government officials to prevent the initiation of such investigation.

It is important to note here that while a sub-committee may reach a finding of wrongdoing, the finding would have to be adopted by the whole committee. Additionally, all reporting by the government would have to be done to the committee, which may then delegate further action on such reports to the relevant sub-committee. The intention here
is to prevent misuse of investigative powers by a small group of legislators. The conferment of these powers to the committee as a whole also has potential for misuse. However, the larger number of members, as well as a wider representation of political parties would act as a more effective check compared to sub-committees.

The power to issue subpoenas is therefore required for a far more limited set of circumstances if committees do not perform investigative oversight as understood in the US system. Defining the set of circumstances in which subpoenas may be issued can set limitations on this power. Committees should be expressly prohibited from issuing subpoenas for enquiring into active investigations being conducted by investigative agencies. They should also be prohibited from issuing subpoenas regarding departmental inquiries against officials while they are still being conducted. The essence of imposing these and other limitations is to guard from parliamentary interference on subjects that are inherently administrative functions. Limitations should not be imposed on subpoena power related to subjects that may also be acted upon by the legislature i.e. policy-making.

Moreover, the issuance of a subpoena by a subcommittee must be confirmed by a majority of the standing committee. This is necessary to prevent this power from being used to pressurize government officials.

The power to issue subpoenas and to call for contempt is co-existent with that of calling for evidence and testimony. The Indian Parliament enjoys an inherent right to call for contempt, independent of a statutory framework. Without the power to impose a penalty the powers of committees will be ineffective at best, disregarded at worst.

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231 See Rosenberg supra note 31.
232 Id. at p. 14.
Currently, disciplinary powers are vested with the Houses or with the Speaker/Chairperson. This centralization of power prevents committees from being effective institutions on their own. Additionally, the Speaker is chosen from the majority party.\footnote{Election of Speaker, Office of the Speaker, Lok Sabha, available at http://speakerloksabha.nic.in/roleofthespeaker.asp (last visited 3/16/2012).} Once chosen, they resign from party membership within the Parliament. This creates a formal sense of neutrality without adequately decentralizing responsibilities. The design of an effective institutional framework should ensure institutional neutrality in institutions requiring the same.

In this case, contempt powers should be delegated to committees, to be implemented through a two-thirds majority vote of the committee. Penalties should range from fines on individuals and entities found in contempt (including government departments) to civil imprisonment for a moderate term.\footnote{Find examples of punishment for contempt in other countries.} In addition courts and enforcement agencies should be mandated to aid the exercise of this contempt power.

This does not imply that the power to hold in contempt should be used lightly. It should be used only after a committee has held a contempt proceeding (or a sub-committee delegated to hold the proceeding) and the person accused has a chance to respond to the charge against him/her. The committee should then vote based on the result of the contempt proceeding. The mandate of the Committee on Ethics\footnote{The Committee on Ethics is an ad-hoc committee, not a permanent one. It was constituted in October 2009. Its function is to oversee the ethical code of parliamentarians and look at complaints of unethical conduct. Available at: http://164.100.47.134/committee/committee_informations.aspx (last visited 3/16/2012).} should be enlarged to make them review the committee’s decision and confirm or revise a decision to hold a person in contempt.\footnote{The Committee on Ethics should also be made a permanent committee.} In doing so, the Ethics Committee would only look at the documents prepared by the sub-committee, and the grounds on which the committee
voted in favor of imposing a penalty. The Ethics Committee would not have to conduct its own investigation on the issue. Additionally, judicial review should be available against a contempt order passed by a committee.

The power to issue subpoenas along with mandatory disclosure requirements as well as the power to impose penalties create far greater incentives for the executive to report to committees in a comprehensive manner. Coupled with defined limitations on such powers they should also prevent unnecessary intrusion into the work of the government.

**Reporting requirements**

Parliamentary committees should be able to ensure that the government provides all documents and evidence required by it in a timely manner. It should also be able to ensure that if the executive’s feedback on its findings or reports is solicited, such feedback should be given in a timely manner. Delays by the executive in responding to Parliamentary committees greatly reduce the ability of Parliament to conduct oversight. The Public Accounts Committee as well as the Committee on Subordinate Legislation has noted the delay, lack of response by government departments to matters under its jurisdiction.  

An even more disturbing example of such delay is the delay in reporting on the annual budget. The budget is introduced in Parliament in March. Parliamentary committees deliberate on the budget and prepare its reports and the budget is passed in

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April. The Action Taken Report based on the executive’s feedback on the committee’s recommendations is presented almost near the end of the year. The value of a committee’s scrutiny on the budget is thus limited to the points it can get the relevant ministry to agree on during its deliberation with ministry officials. The Action Taken Report detailing the executive’s response to a committee’s recommendations on the annual budget is therefore of no practical significance for that year’s financial expenditure.

There should be detailed, and specific reporting requirements imposed on the executive for different sorts of functions committees are to perform. First, all documentation or records asked for from the government should be submitted within sixty working days. This requirement may be relaxed by a period of thirty days by the chairman of the committee based on a request from the concerned government department. Further extensions should be granted by a majority vote of the committee, only if the head of the department appears in person before the committee to explain the reasons for seeking such a relaxation. In any case, such an extension should not be for more than a period of ninety days. This gives the executive a maximum period of six months to the executive to respond to documents or other materials sought by the committee.

Second, it is preferable to ensure a smaller time limit for reporting back to committees when the executive seeks financial appropriations. This would apply for committee work related to the annual budget as well as any supplementary or emergency

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appropriations. The standard time limit for such reporting should be seven working days, which may be extended by a further period of seven working days on request. Larger time limits would render parliamentary oversight of very limited practical use.

**Research Support**

Committees require a large amount of professional research support in order to be effective in their oversight work. The best example of this is the existence of professional research staff for different committees within the US Congress. Congressional committees enjoy a large amount of autonomy in employing personnel, as well as deciding compensation.\(^{239}\) The officials working for the Parliament, as well as the Parliament library provide parliamentarians in India research support. Neither of these consists of personnel who are technically qualified to provide sector-specific research support. Additionally, parliamentarians are not provided any personal research staff. This leads to an enlargement of the knowledge gap between the executive and the standing committees.

The proposed legislation would mandate that there should be at least five research personnel for every sub-committee. Each standing committee should have at least ten research personnel independent of sub-committee staff. The qualifications for research staff should be decided by a majority vote within the committee. Sub-committees may list their own qualification requirements, but these would have to be voted on by the standing committee. The compensation for such research staff should be uniform across all

\(^{239}\) The House Rules of the House of Representatives allow for the appointment of up to 30 professional staff members for each committee. The chairperson of the committee decides the compensation of staff members. See Rule X(9)(a) of the Rules of the House of Representatives.
committees, and should be decided by the Speaker and Chairperson in consultation with each other.  

Safeguards should be included to prevent misuse of research staff for personal use by Parliamentarians. First, personal use of research staff by a parliamentarian should be considered an ethics violation subjecting him or her to an ethics proceeding. Second, one sub-committee should not be able to use research staff assigned to another sub-committee without the consent of both the chairperson of the concerned sub-committee as well as the standing committee. This would create enough insulation for parliamentary research staff from misuse by individual parliamentarians while also allowing for flexibility in allocating research staff in case of genuine need.

**Structuring incentives for committee members**

The legal changes proposed above would drastically alter the institutional structure of the committees from the present system. However, oversight will continue to be ineffective if parliamentarians do not have adequate incentives to conduct oversight in the first place.  

Presently, parliamentarians by and large prefer working in the constituency to working in parliament. This is largely because their electoral fortunes are determined by the work done in the constituency rather than their achievements in Parliament.  

Additionally, the parliamentary model of democracy reduces incentives for

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240 Some standing committees are under the administrative supervision of the Lok Sabha secretariat while others under the Rajya Sabha secretariat. See “Parliamentary Committees”, at http://www.parliamentofindia.nic.in/ls/intro/p21.htm, visited on 3/16/2012.

241 As Mehta and Kapur state: “…opposition parties are unable to generate new information about government activities that can allow them to take the executive to task.”, Mehta and Kapur, supra note 82, at p. 10.

242 See Mehta and Kapur supra note 82, p. 19.
strong oversight. Committee members from the majority party do not have the same incentives for oversight as committee members in the US Congress. The political fortunes of committee members are tied to the fortunes of their party. Strong oversight that could cause potential embarrassment for the government may have negative consequences for committee members of the majority party. Minority members would also be wary of being subjected to stringent standards of oversight if they perceive that their party may come to power in the near future.

For this reason, it is proposed to establish certain minimum standards of performance for committees. This may be done by first requiring that all committees and subcommittees prepare agendas and action points on an annual basis. Both houses of Parliament should approve these. Second, all committees should be required to prepare a report of the work undertaken by them in the past year. This should contain a list of all work undertaken by them, a report on whether the work undertaken satisfies the agenda set at the beginning of the year, and reasons in case of non-fulfillment. Third, the Speaker should be mandated to fix time for chairpersons of committees to justify committee agenda and solicit feedback, and also raise any issues regarding their committee’s interaction with the executive.

While these proposals do not directly address the issue of incentives, they create pressure on committees to publicize its work on the floor of the House. This should in turn create pressure for committee chairpersons to ensure that the committee is working

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243 Terry M. Moe and Michael Caldwell, *The institutional foundations of democratic government: A comparison of presidential and parliamentary systems*, 150 Journal of Institutional and Theoretical Economics 171, 177 (1994): The authors argue that the governing party is much more free to pass its own program at will than in a presidential system. Though they say it increases structural accountability, in my opinion it also reduces incentives for oversight in Parliament. Though structural accountability is enhanced, mechanisms for such accountability rarely incorporate legislative inquiry as a means to prevent executive indiscretions.

244 See Kapur & Mehta *supra* note 82, p. 12-13.
effectively. While this framework is far from ideal, it does create some sort of competition between committees to do a better job of scrutinizing the executive.

Existing rules of procedure provide that disciplinary action may be initiated against a committee member if he/ she absents himself/ herself from two consecutive committee meetings. This rule should be made non-discretionary by mandating that committee chairperson automatically take notice of such absence, and refer such cases to the Speaker/ Chairperson. Again, while this provision may not actually ensure qualitatively better oversight, it would at least ensure that committee members do not abdicate their committee responsibilities in favor of other priorities.

This and other legislative proposals for strengthening the committee system would result in a vastly different committee system than the one at present. Committees would become far more specialized, more stable and have greater capacity to conduct oversight. Incentive mechanisms for parliamentarians need a response addressing political incentives. While that is essential, it cannot be examined within this paper. It is however contended that the proposals outlined above would in fact increase incentives considerably from the present system. Parliamentarians may oppose a structural shift if it takes time away from their constituency work. However, over time the emphasis on parliamentary and oversight work would be equally cumbersome for all incumbents. Therefore, the political incentives for conducting oversight itself may change over a period of time.

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Improving oversight mechanisms in the Lok Sabha and Rajya Sabha

One primary issue with respect to Parliament is the paucity of time. The number of days Parliament sits for has reduced over the years.\textsuperscript{246} Therefore, while the role of the state has grown more complex, the role of the legislature has become less relevant. One reason for the decrease in the number of days is the power of the President to convene Parliament.\textsuperscript{247} Effectively, the council of ministers convenes Parliament. The executive may have a tendency to take its majority in Parliament for granted. It would therefore have no incentive to convene Parliament for any longer than necessary to approve the government’s agenda.

This paucity of time has obvious implications for oversight that may happen in the Houses. Parliamentary committees continue to hold meetings even when Parliament is not in session. However, hardly any of this work is ever discussed in either House. Discussions and debates in both Houses have to incorporate oversight related work in the committees to be effective. This cannot be done in an ad-hoc manner merely by scheduling discussions on important subjects as and when such demands arise. There has to be a systematic framework to allow discussions on the floor of the House to be informed by oversight work done by committees.

Presently, the Question Hour is the only mechanism related directly to parliamentary oversight of the executive. However, there have been repeated instances of the Question Hour being adjourned in the face of disruptions or disturbances.\textsuperscript{248}

\begin{footnotesize}
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  \item \textsuperscript{246} Rohit Kumar, Vital Stats \textit{supra} note 203.
  \item \textsuperscript{247} Constitution of India, Art. 85.
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Additionally, the Question Hour allows individual parliamentarians to question the executive on matters important to them. It does not facilitate a systematic scrutiny of the executive on a particular issue. Such systematic scrutiny is stymied by the existing lack of scrutiny at the committee level, as well as the information asymmetry between individual legislators and the executive.

To remedy these issues, a variety of legislative provisions may be made. First, it must be ensured that Parliament works longer to allow for greater deliberation and debate in the two chambers. This may be done either by modifying the President’s power to convene Parliament, or mandating that the President convene Parliament for a minimum number of days every year. The former requires a constitutional amendment and may be difficult to enact.

The second alternative qualifies the President’s prerogative in a constitutional manner. It would be more viable to do so. Therefore, the President should be mandated to ensure that Parliament convenes for at least a hundred and twenty days every year. While it may be desirable to mandate that Parliament work for longer, it may impede the work of parliamentary committees.

Second, there must be specific time allocated for discussion of committee oversight reports. One example is the time allocated for the discussion of Private Member Bills every Friday afternoon. The Speaker/Chairperson should schedule at least one such session every week. The chairperson of the relevant committee as well as the minister of the relevant ministry should be mandated to attend such discussion. The session should end with the response of the minister to the points raised during the discussion.

Financial oversight has to be exercised in the houses as well as the committees. Presently, most discussion on finances takes place during the budget session of Parliament, and when supplementary demands for appropriation are made later in the year. Analysis of parliamentary activity reveals that most the budgetary demands of most ministries are not discussed at all.249 Most demands are guillotined.250 Any reform aimed at making the executive more accountable should ensure that most ministries are discussed at length. It is proposed that if the budgetary demand for a particular ministry exceeds five percent of all demands made for that particular year the demand should not be guillotined. Moreover, standing committee reports on budgetary demands should be compulsorily discussed before a particular demand can be put to vote.

**Consequences of the proposed framework**

The committee system is at the center of the framework proposed above. This is simply because committees seem best suited to conduct oversight over the executive. However, reform of mechanisms in the Houses is essential to enforce accountability on the basis of the work done by committees. While, committees may be better suited for oversight, political accountability can best be ensured on the floor of the House. Questions raised on the floor of the House attract the attention of the Parliament as a whole. They also attract greater attention from society in general. Moreover, the government necessarily gives greater deference to the will of Parliament as expressed in the Houses since it also has to get its own business approved.

249 See Burman *supra* note 71.
250 *Id.*
The framework proposed above should facilitate the development of more
effective committees. Committees would initiate the year by discussing its agenda and
get it approved after discussion in the Lok Sabha or Rajya Sabha. This would enable the
executive to shape its response to queries from committees, and also lead to greater
transparency. Subpoena and contempt powers would lead to more comprehensive
disclosures from the executive. Finally, changes in the internal structure as the creation of
sub-committees and provision for research staff should exponentially increase the level of
expertise within the committees.

These changes would have indirect consequences for discussions on the floor of
the Lok Sabha and Rajya Sabha as well. First, the provision for greater number of
working days would allow a greater diversity of views to be expressed. This would
hopefully reduce the incentives for disruption, and also force the executive to respond to
a much greater number of queries. Specialization attained from committee work would
also enable members to ask sharper questions from ministers. The general level of
deliberation within Parliament would therefore change. The result of these structural
changes would hopefully aid in ex-ante oversight over the executive. The concluding part
of this paper aims to crystallize this structure in the form of draft legislation.
The Parliamentary Oversight of Government Bill, 2012

A Bill

To provide for parliament’s oversight over the central government, to ensure compliance with laws created by it by the government, statutory agencies, regulators, commissions, and government officials, and to facilitate Parliament’s input into policymaking with a view to increasing the executive’s accountability to Parliament.

Be it enacted by the Parliament in the sixty third year of the Republic of India as follows:

Part I: Preliminary

1. Short title, extent, application and commencement.

   (1) This Act may be called the Parliamentary Oversight of Government Bill, 2012.

   (2) It extends to:

   (a) all ministries, departments, agencies and officials of the Government of India;

   (b) every legal entity, office or position created by the Constitution or a law of Parliament, or by the central government.

   (3) All provisions of this Act shall be brought into force within one year of the enactment of this Act.

2. Definitions.

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251 The draft legislation aims to replicate the structure and form of bills in India. I have however looked at references both from the US and UK on drafting legislation.
(1) In this Act, unless the context otherwise requires,

“central government” means and includes the central executive headed by the Prime Minister and the Council of Ministers as defined in Article 74 of the Constitution of India and all its ministries, departments and agencies, and entities and persons under its ownership, employment or control;

“committee” means any committee created by Parliament or the Speaker of the Lok Sabha or Chairperson of the Rajya Sabha;

“contempt” means willful disregard or non compliance with a direction to present any document, person or material required for conducting oversight.

“member of Parliament” means any sitting member of the Lok Sabha or the Rajya Sabha.

“oversight” means\footnote{Oversight is not defined inclusively to prevent any unwarranted expansive interpretation of oversight powers.} overview

(i) review and scrutiny of the administration and execution of laws passed by Parliament\footnote{Adapted from the US 1970 Legislative Reorganization Act.};

(ii) scrutiny of policies framed by the central government to check for compliance with existing laws, and to recommend modifications if necessary;

(iii) monitoring and scrutiny of the financial allocations made by Parliament and the expenditure of the central government;

(iv) investigating alleged acts of legal violations and maladministration by officials in the central government and mandating the initiation of appropriate actions by suitable government agencies;

252 Oversight is not defined inclusively to prevent any unwarranted expansive interpretation of oversight powers.

253 Adapted from the US 1970 Legislative Reorganization Act.
(v) assessing the efficacy of existing legislation and recommending the need for new legislation;

(vi) reviewing and assessing the operation of government functions and programs and recommending changes if necessary;

“Parliament” means Parliament as defined in Article 79 of the Constitution of India;

“parliamentary oversight” means oversight conducted by Parliament or any of its committees;

**Part II: Parliamentary oversight**

3. Responsibility for oversight.

   (1) Oversight shall be one of the primary functions of Parliament and Members of Parliament. The mechanisms for conducting oversight by committees of Parliament shall be limited to those specified in this Act.

   (2) The central government, state governments where necessary, and other statutory entities shall aid Parliament in conducting oversight.

4. Existing powers and functions.

   (1) The provisions of this Act shall not modify or change any existing institutions or mechanisms of Parliament and parliamentary business unless explicitly specified under this Act.

   (2) The Speaker of the Lok Sabha and Chairperson of the Rajya Sabha and other officials of Parliament shall continue to exercise their existing powers to the extent they are not specifically altered by the foregoing provisions.

**Part III: Committee structure**
5. Creation of committees and sub-committees:

(1) The Departmentally Related Standing Committees (hereinafter referred to as “standing committee”) and other committees shall continue to exist as at present.

Provided that, subject to the provisions of this Act, Parliament may create or abolish parliamentary committees as per its existing powers.

(2) The Lok Sabha and Rajya Sabha shall pass resolutions within six months of the commencement of this Act deciding the jurisdiction of the standing committees. The resolutions shall form a part of this Act and may be modified only by amendment of this Act.

(3) Each standing committee shall consist of sub-committees created by majority votes of all members of the standing committee present and voting.

(4) The standing committee shall ensure that every department of the central government is under the jurisdiction of a separate sub-committee.

(5) In addition, there will be a sub-committee on financial oversight and a sub-committee on regulation in every standing committee.

(6) The committees on Subordinate Legislation in the Lok Sabha and Rajya Sabha will be dissolved on the coming into force of this Act.

(7) The jurisdiction and composition of sub-committees, and subsequent changes to the same shall be decided by a majority vote of the entire standing committee.

*Provided that*, each sub-committee shall consist of not less than three and not more than eight members.
6. Tenure of standing committees and committee chairpersons.

   (1) Standing Committees shall be constituted at the beginning of every Lok Sabha and be dissolved at the dissolution of the Lok Sabha.

   (2) Chairpersons of standing committees shall be appointed as per existing rules and conventions within Parliament.

   (3) Chairpersons shall be appointed for a period of not more than three years. No Member of Parliament can be re-appointed as a chairperson of any standing committee after the expiry of his or her term.

7. In the case of any dispute regarding the provisions of Sections 5 and 6 above, the matter shall be referred to the Speaker of the Lok Sabha or Chairperson of the Rajya Sabha as the case may be. Their decision on the matter shall be final.

8. Tenure of sub-committees.

   (1) Subcommittees shall be reconstituted at the end of two years from the date of their creation.

   Provided that, the term of the sub-committee on financial oversight will be the same as the term of the standing committee as stated in Section 6(1) of this Act.

   Provided that, in exceptional cases where the agenda of the sub-committee has not been completed within two years, the standing committee may vote to extend the sub-committee’s term by a further period of ninety days.

   (2) The Chairperson of the standing committee shall appoint chairpersons of sub-committees for a period of not more than two years.
9. Jurisdiction of sub-committees on financial oversight.

   (1) The sub-committees on financial oversight shall aid the standing committees in their oversight of government expenditures.

   (2) In case of a dispute regarding the jurisdiction of any financial oversight committee with one another, or with any of other financial committees, the decision of the Speaker on the matter shall be final.

10. Jurisdiction of sub-committees on regulation.

   (1) The sub-committees on regulation shall conduct oversight over all subordinate legislation under the jurisdiction of their standing committee.

   (2) The sub-committees shall also conduct oversight over the functioning of statutory regulators, if any, under the jurisdiction of their standing committees.

      Provided however, that sub-committees on regulation shall not examine or make recommendations regarding the increase or decrease in the financial allocation to statutory regulators.

   (3) The sub-committee shall be guided in its work by the following principles:

      (a) The need to study and recommend on the independence of statutory regulators from the executive and the legislature;

      (b) The need to study and recommend on circumstances in which regulators should be subject to the executive’s decision on a particular issue;

      (c) The need to examine the nature and extent of rule-making that may be performed by statutory regulators.
(d) Any other principles that may be considered relevant by the standing committees and specified clearly and explicitly.

Part IV: Oversight related functions and powers

11. Central government’s duty to disclose.

(1) The central government shall disclose to all committees of Parliament all information relevant for conducting oversight.

(2) Additional disclosure shall be made in pursuance of a specific request for information by a committee of Parliament.

(3) All information requested under Section 11(2) has to be disclosed within a period of sixty days from the date the request is made.

(a) The Chairperson of the standing committee may extend this period by a period of up to thirty days on a written request from the concerned department or agency of the central government.

(b) A majority if the entire standing committee, if so requested in person by the head of the department or agency requesting such extension may grant a further extension of up to ninety days.

(c) Notwithstanding Sections 11(3)(a) and (b), any information related to a financial allocation or expenditure sought to be made requested under Section 11(2) shall be disclosed within a period of seven working days. Provided that, an extension of up to seven working days may be granted upon request.

(4) Provided that the central government may not be compelled to disclose information:
(a) Considered secret under the Official Secrets Act on the day request for such information is made by a committee of Parliament;

(b) Considered sensitive or confidential on grounds of national security.

12. Subpoena powers of parliamentary committees.

(1) If the central government refuses to disclose information requested by a parliamentary committee or sub-committee, and such information is not covered by Section 11(3) of this Act, the concerned standing committee or other parliamentary committee may subpoena the concerned department official to furnish the information.

Provided that, sub-committees will not have the power to issue subpoenas. Any subpoena has to be issued by a majority of the standing committee on behalf of its sub-committee that has been refused access to information.

(2) The agency, department, or official to whom the subpoena is directed shall be obligated to furnish information demanded under the subpoena.

(3) The willful disregard of a validly issued subpoena may make the concerned person liable for contempt of Parliament.

(4) Any dispute regarding the validity of a subpoena shall be referred exclusively to the Supreme Court of India whose decision in the matter shall be final.

13. Power to punish for contempt.

(1) All committees of Parliament engaged in conducting oversight shall have the power to punish for contempt as provided under Section 12(3) of this Act.
(2) A contempt proceeding shall be initiated by a standing committee on a motion moved by the Chairperson of the standing committee, or a request made by a Chairperson of a sub-committee to the Chairperson of the standing committee.

(3) The standing committee shall deliberate on the motion for contempt before arriving at its final decision.

Provided that, no decision shall be taken without affording an opportunity to the accused to be heard.

(4) The standing committee may decide that a person is guilty of contempt, and the penalty to be imposed, by a two-thirds majority of the entire committee present and voting.

(5) If the standing committee holds that a person is guilty of contempt, the vote will have to be confirmed by the House Committee on Ethics. The Committee on Ethics will confine its study of the matter to whether the standing committee had a prima facie case, and whether the requirements of natural justice were complied with.

(6) The penalty for contempt may range from a sum of ten thousand rupees to fifty thousand rupees in addition to civil imprisonment for up to seven days.

(7) Any dispute relating to a finding of contempt may be filed by the accused exclusively in the High Court of Delhi.

(8) An appeal from the judgment of the High Court shall lie in the Supreme Court of India.

14. Research staff for committees.
(1) All committees of Parliament shall have ten qualified professional research staff to assist them in conducting oversight.

(2) In addition to research staff mentioned in sub-section (1) above, each sub-committee shall have five qualified professional research staff to assist them in conducting oversight.

(3) The staff mentioned in sub-section (1) shall be under the operational control of the Chairperson of the standing committee, and the staff mentioned in sub-section (2) shall be under the operational control of the Chairperson of the sub-committee.

(4) Research staff belonging to one sub-committee may be allocated to another sub-committee:

(a) with the consent of the Chairperson of the sub-committee to which the research staff is assigned; and,

(b) with the consent of the Chairperson of the standing committee.

(5) The qualifications of research staff mentioned in sub-sections (1) shall be fixed or amended by a majority vote of the standing committee.

(6) The qualifications of research staff mentioned in sub-section (2) may be decided by the sub-committee. The qualifications shall be subject to a majority vote of the standing committee.

(7) The remuneration payable to qualified research staff shall be fixed by the Speaker of the Lok Sabha and Chairperson of the Rajya Sabha in consultation with each other.
Provided that, such remuneration and other benefits shall be uniform across all committees and sub-committees in Parliament.

(8) No Member of Parliament shall engage research staff defined under this section for their personal work.

Part IV: Parliamentary procedures and reporting requirements

15. Obligations of standing committees.

(1) All standing committees shall:

(a) At the beginning of every year, determine the agenda and the subjects to be examined by the committee and sub-committees that year;

(b) prepare an annual report on the activities of the standing committee and its sub-committees during the previous year;

(c) the annual report shall include:

(i) The agenda of the standing committee and its sub-committees for the previous year;

(ii) A statement as to whether the agenda for the standing committee and its sub-committees was completed, and if not, the reasons for the same;

(iii) Details of meetings, subjects discussed, attendance record of committee members for meetings, and summaries of all recommendations made;

(iv) Details of the response of the central government to its recommendations;
(v) Other significant findings and recommendations that the standing committee and its sub-committees made during the previous year.

(2) The Chairperson of the standing committee shall submit this report to the Speaker of the Lok Sabha or the Chairperson of the Rajya Sabha as the case may be, who shall cause it to be tabled in Parliament.

16. The Speaker of the Lok Sabha or the Chairperson of the Rajya Sabha as the case may be:

(1) Shall allocate time for discussion for all annual reports prepared by standing committees in at least one session of Parliament every year;

(2) Shall initiate disciplinary action against any Member of Parliament who absents himself or herself from more than two consecutive sittings of any committee or sub-committee of Parliament;

(3) No decision regarding any disciplinary action shall be taken without providing the concerned Member of Parliament an opportunity to be heard;

(4) Shall ensure that time is allotted on a weekly basis for the discussion of any report tabled by a committee or committees of Parliament;

(5) Shall ensure that all financial demands made by individual ministries in the annual budget that exceed five percent of the total financial appropriation sought by the central government for that year are discussed before they are voted on by the House.

17. Duty of the President to convene Parliament.

The President of India shall convene Parliament for a minimum of a hundred and twenty days every year.
Part V: Miscellaneous

18. Protection of action taken under direction from senior officers.

(1) No action for shall lie against an officer of the central government for failure to furnish information required by parliamentary committees if a senior officer has directed the concerned official to withhold such information;

(2) In such an event, the action for contempt shall lie against the senior officer who has given the direction to withhold information.

19. Limitation on oversight powers.

Committees and sub-committees of Parliament shall not supervise or monitor existing investigations by executive agencies unless powers to do the same have been vested for specific cases through a resolution in both Houses of Parliament.


Without prejudice to the writ jurisdiction of High Courts and Supreme Courts, no courts will have jurisdiction over any dispute under this Act, except as specifically provided.


(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for:

(a) Its internal procedures or guidelines to be followed for disclosing information required for parliamentary oversight, to meet its obligations under Section 3(2) and Section 11;
(b) The procedure for responding to subpoenas issued to its officials by committees under Section 12(2);

(c) The procedure for responding to notices of contempt under Section 21(4);

(d) Guidelines for convening Parliament under Section 17.

(3) The Speaker of the Lok Sabha and the Chairperson of the Rajya Sabha as the case may be, and committees of Parliament may frame rules to carry out the provisions of this Act.