

What the 2023 Monsoon Session of Parliament Tells Us About the State of Governance

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Waves of parliamentary theatrics define the disjointed operative functionalities of Indian democracy. For watchers and observers of session proceedings, repetitive adjournments, an ecosystem of chaos, protests in and outside the chambers of the house, bias and favouritism among House speakers against opposition party parliamentarians have all become a part of an unusual norm.

This norm defines and catalyses the speedy passing of bills by the ruling executive without critical discussion or appropriate reflection.

On August 10, for example, amidst uproar, the Rajya Sabha Speaker, Vice-President Jagdeep Dhankhar, passed the Pharmacy (Amendment) Bill in a matter of three minutes from the time it was called for vote, without even the audible 'aye' of the parliamentarians. What one could hear was a loud 'no' when the vote was called.

Read, for instance, the details of the newly introduced Election Commissioners Bill. This Bill comes despite what the Supreme Court held earlier this year while examining Article 324(2) of the constitution. The Supreme Court said that the appointment of the Chief Election Commissioner and ECs shall "subject to the provisions of any law made in that [on behalf of the] Parliament, be made by the President."

In law scholar Gautam Bhatia's constitutional and jurisprudential interpretation of the SC judgment, "The SC did not say that the CJI *has* to be on the appointments committee under the future law. Thus, the mere fact that the new bill removes the CJI is not the reason why it's bad. But nor did SC say that *any* law would be consistent with the

Constitution. The law would have to ensure that the EC was adequately insulated from executive dominance, because the referee has to be impartial. The Election Commissioners Bill obviously fails that test.”

This is thus one insidious way in which the current regime has used legislative and other institutionalised apparatus to further its agenda of establishing centralised and consolidated control. Presence of legal voids – say from recent or previous SC judgments – makes its path less embroiled with challenges.

This Monsoon Session presented three highlights, all signalling a crisis of accountability and an over-centralised executive.

First, was the evocation of the ethnic conflict in Manipur and the response solicited by the opposition from the Union home minister and the prime minister, while attributing accountability. ‘Accountability’ is a word used less now in the democratic order of contemporary governance affairs but it is important nonetheless. Opposition MPs demanded action from those in power against the Biren Singh government for what has happened in the state over the last three months.

The ongoing conflict in Manipur should have perhaps taken centre stage this Monsoon Session. The Union government should have addressed questions on its own accountability, while discussing key concerns of the state of governance in a BJP-governed state.

Also read: The Tribal Politics Behind the Manipur Conflict

Second, was the passing of the Digital Personal Data Protection Bill, 2023. The legislation is going to have enormous ramifications. For example, one of the Bill’s key limitations is with respect to the exemptions provided to data processing by the state on grounds such as national security, which may lead to data collection, processing, and retention beyond what is necessary. This will violate the fundamental right to privacy.

A recent essay by Suyash Rai and Anirudh Burman, from Carnegie India, is a must read. They explain how the 2023 DPDP (Digital Personal Data Protection) Bill is very different from the 2018 bill, whereby, there are aspects of this (current) bill that could “potentially limit its efficacy”.

“First, the exemptions given in the bill and the power to give more exemptions are so expansive that practically anyone and any processing activity can be exempted. In addition to an almost complete exemption for government bodies, the bill also envisages broad powers to exempt other entities. Consider, for instance, clause 17(5), which seeks to empower the central government to, before the expiry of five years from the date of commencement of this law, declare that any provision of the law shall not apply to such entity processing the data or any classes of such entities for such period as may be specified in the notification. This means that the government can completely exempt any entity without any guidance in the legislation on the basis for such an exemption. When

such powers are given to the government, at the very least there are some criteria stated in the law to guide the decision to exempt, but no such criteria have been provided in the bill.”

“Second, the proposed data protection board would have no regulatory or supervisory powers, and almost all the rules and regulations would be made by the government. Giving such responsibilities to a ministry of the government is a questionable move—to do this well, it will have to build considerable capabilities that are easier to build in a separate agency. On the other hand, the board would have little incentive to build technical capabilities that could be useful for regulating the digital economy from a data protection perspective. The board will also have less independence than other public authorities in India. For instance, the chairperson and members would be appointed for two years and may be reappointed thereafter, while the standard practice is to appoint such authorities for three or five years. A short duration of appointment typically hampers independence from the government because reappointment can be used as a bargaining chip.”

“Third, in some ways, the individuals whose personal data is to be protected will be worse off. For instance, the bill seeks to amend the Information Technology Act, 2000, to do away with the provision on compensation to be provided to the affected person in situations where, due to negligence in implementing and maintaining reasonable security practices and procedures, a wrongful loss is caused to a person or a wrongful gain is made. The DPDP Bill does not provide for any compensation to such affected persons. As an aside, the bill also seeks to amend the right to information law to prohibit the release of any personal information, which is a considerable dilution of the law.”

These are serious issues that perhaps did not get enough attention this Monsoon Session before the Bill was passed.

Once the Bill has become Law, the Union government will get most of the powers to define and exercise the scope of its application and the substance of data protection regulations.

[Also read: Parliament Diary: Parts of Rahul Gandhi's Speech Expunged and Missing Sansad TV Camera Angles](#)

Third was the passing of the [Government of National Capital Territory of Delhi \(Amendment\) Bill, 2023](#). The Bill, as intensely debated in both Houses of the parliament, raises constitutional concerns of legislative over-reach by the Union government on the powers vested in an elected state government. The Bill, soon to become law, confers powers over the transfer and posting of officers to the National Capital Civil Services Authority (which consists of the chief minister, Chief Secretary of Delhi, and Principal Home Secretary of Delhi) that may break the triple chain of accountability that links the civil services, ministers, the legislature, and citizens. This shall violate the principle of parliamentary democracy, which is a part of the [basic structure doctrine](#).

A lot has been written and said about the *unconstitutionality* of the Bill which empowers the Lieutenant Governor or LG to be seen as a 'Super CM' with the power to exercise his sole discretion on several matters including those recommended by the National Capital Civil Services Authority, and the summoning, prorogation and dissolution of the Delhi legislative assembly.

It authorises department secretaries to bring to the notice of the LG, the chief minister and the chief secretary, any matter that may bring the Delhi government into controversy with the Union government.

The Bill's passing, and it becoming a law, means that the elected government in Delhi and its chief minister Arvind Kejriwal will even lose their power to convene a meeting or session with concerned authorities to conduct essential government business.

The LG's power will reign supreme as most department secretaries will now bring certain matters directly to the notice of the LG, chief minister or chief secretary, without consulting the concerned minister. This will go against the collective responsibility of the elected state cabinet, as the concerned ministers cannot provide inputs.

While opposing the Bill in the parliament, Congress leader and senior advocate Abhishek Manu Singhvi had said:

“(This Bill leads to the) creation of an authority where the chief minister is in a minority, to empower two bureaucrats to overrule an elected chief minister and make the LG, a constitutional figurehead except in three areas, into a 'Super CM' and give powers to the LG to appoint heads of large number of regulatory agencies.. It is the deliberate regression from a people's government guaranteed to the people of Delhi 30 years ago. And hence it is a decimation of the most fundamental constitutional values...”.

While reflecting on the selective interpretation of events and the way the proceedings happened this Monsoon Session (as a pattern seen for some time now), one can only reminisce how in the current governmentality, there are elements similar to that of the Raj, the colonial British administration, that ruled India for over two centuries (first by Company and then by the Queen's rule), establishing an imperial umbrella in centralising and consolidating power via law, language and knowledge.

A systematic capture of institutions is seen amidst a deep retrogression in democratic values and constitutionally safeguarded separation of powers. One may only ascertain how the current state of polity in India closely resembles the lived experience of a colonial administration.

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