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Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

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Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ROLE OF OPPOSITION IN INDIAN PARLIAMENT: CONCEPTUAL ACCOUNT AND RELEVANCE

AUTHORED BY - ABHISHEK DUBEY¹

The word Parliament means 'to speak' or 'talk'², and to talk it is essential to have at least two parties the speaker and listener. The present form of Indian Parliament is based on same analogy by having a ruling party and an opposition. The role of opposition in such scenario is inevitable and gigantic. The references suggest that parliament is a highest legislative body in this country, which even have power, up to certain extent, to amend the Constitution of India³, the supreme entity and all other organs work under the constitution only. Therefore, opposition in Indian Parliament has role in connection to its routine functions as well as specific functions. The areas are wide to note like legislation, correction, policy making, good order & many more. The study is establishing the conceptual account & relevance of opposition in Indian Parliament by making the order of its formation, comparison, role & advantage under constitutional scheme.

1. Prologue

The common function of parliament includes law making functions, representation & deliberation and oversight of the executive. These all functions have inevitable role of opposition, so as to maintain a proper status of performance in parliament. In Indian system, parliament consists of the President, Council of States & the House of the people⁴. The President is in leading, ceremonial & conclusive role. The Council of States is the upper house of the Indian Parliament, which has members elected by state legislators and this house never dissolve⁵. On the other hand, the House of the People is the lower house and it has members directly elected by people of India on the basis of universal adult

¹ M.A. LL.M. UGC-NET (Law) Ph.D. Scholar – Law, Deen Dayal Upadhyaya Gorakhpur University, Gorakhpur, Uttar Pradesh - 273009

² Dr K S Chauhan, Parliament: Powers, Functions & Privileges, First Edition 2013, Page 3

³ Article 368(1), Constitution of India

⁴ Article 79, Constitution of India

⁵ Article 83(1), Constitution of India

suffrage⁶ and elected for a fixed term of five years from its first meeting⁷, generally. Both the houses have the Leader of Opposition, being essential part of a democracy, normally leads in parliament all the political parties sitting in opposition.

Conventionally, there is no exclusive definition of the term 'Opposition' has been placed but 'Leader of Opposition' has been defined exclusively, under section 2 of the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977.

[In this Act, "Leader of the Opposition", in relation to either House of Parliament, means that member of the Council of States or the House of the People, as the case may be, who is, for the time being, the Leader in that House of the party in opposition to the Government having the greatest numerical strength and recognised as such by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.

Explanation- Where there are two or more parties in opposition to the Government, in the Council of States or In the House of the People having the same numerical strength, the Chairman of the Council of States or the Speaker of the House of the people, as the case may be, shall, having regard to the status of the parties, recognise any one of the Leaders of such parties as the Leader of the Opposition for the purposes of this section and such recognition shall be final and conclusive]⁸.

From above, it is noteworthy that leader of opposition is the leader of the political party which is in opposition to the government. It signifies the term 'Opposition'.

Apart from above references, it is provided that in the conduct of business in parliament, until Parliament by law otherwise provides, the quorum to constitute a meeting of either House of Parliament shall be one-tenth of the total number of members of the House⁹.

The formation of opposition in Indian parliament is inherent and its role, being essential and correctional, is of great importance, needs to be elaborated as further articulate through research. It

⁶ Article 326, Constitution of India

⁷ Article 83(2), Constitution of India

⁸<https://web.archive.org/web/20100116211914/http://mpa.nic.in/actopp.htm>

⁹ Article 100(3), Constitution of India

has been made in order as adopted in the polity of India and, of course comparative study justifies the relevance of the conception. Role of any entity in polity is initially backed by requirement, which has been made a part here, with its further extension and corrective measures. The research is primarily fact based and interpretation of which has also been supplemented, as and when required.

2. Opposition in Democracy

[Democracy consists of four basic elements: (1) A political system for choosing and replacing the government through free and fair elections, (2) The active participation of the people, as citizens, in politics and civic life, (3) Protection of the human rights of all citizens, and (4) A rule of law, in which the laws and procedures apply equally to all citizens]¹⁰.

Apart from above, famous quote resembles democracy as ‘the government Of the People, By the People, For the People’¹¹.

It needs to be extended that a government which formed through a free and fair election, where majority citizen voted for it, having a duty to protect the human rights of all citizens and to establish rule of law, in order to ensure the equality among the citizens, is a government of no other features but the government Of the People, By the People, For the People.

After formation of such government, it gets to ensure that this government is intending to apply above features, in order to establish a democracy. The remedial extent entails that this government has to have two dimensions; one is ruling side and the other is opposition. The ruling side is the executing authority as entrusted by its citizens/voters and the opposition has to mark a step of corrective measure as and when required. Therefore, the inevitable role of opposition in a democracy is lucidly observed.

At the origin of any government, it is almost first step to enquire whether it is going to be a democracy and if yes, deliberation comes first, which is established essentially with an opposition, so as to contain arguing and responding parties. This practice lives in that polity till it carries a face of democratic government. It can be emphasised that democracy itself creates opposition which in fact makes it to its proper function.

¹⁰<http://web.stanford.edu/~ldiamond/iraq/WhaIsDemocracy012004.htm>

¹¹Late Abraham Lincoln, The Honourable Former President of United States of America

The government, in a democracy, carries all the functions for its people, and so it is the master of all resources corticated for the purpose. It may adopt the practice to perform in its own whim and caprices and so the role of opposition needs to be audacious, precautionary, regular, corrective& most importantly functioning on the dais of integrity. The government can never run away from its responsibilities until the opposition wants it.

3. Indian Perspective

The constituent assembly drafted the Constitution of India, which is supreme in Indian polity and it has adopted the system of having democratic government in India since its inception. Preamble to the Constitution of India signifies India to be a democratic republic, which is part of the Constitution of India¹². Therefore, the government is of democratic nature and it is established by the supreme law.

However, procedural testament may support verbally audacious that firstly, the government in India is elected through a free and fair election voted by citizens on the basis of universal adult suffrage¹³. This process has been provided by the Constitution itself and election is conducted by an independent constitutional body namely, Election Commission of India¹⁴. Secondly, the Constitution- supreme law of the land is given to people by themselves and it signifies the place of people in Indian political system. Therefore, participation of people is one of the requirements in the governance of the country. The aspect of participation has been maintained in Indian polity through different constitutional and extra constitutional mechanisms, though not directly through a constitutional provision. Some examples like Elections on Fixed Intervals, Exclusive Voting Right, State Maintained Law & Order, Public Authorities Functioning in Compliance of a Citizen's Charter, Right to Information, Social Audit, Mandatory Provision of Registration of Cognizable Cases for Investigation, Enforcement of Fundamental Rights through Writs, Special legislation for Deprived Class, Audit of Public Expenditures through Constitutional Mechanism and many more are the features attracting the participation of citizens in the governance. Thirdly, the human rights of citizens are maintained strictly through constitution as well as statutory mechanisms, both exclusive and frequently functional. The fundamental rights, which include major human rights, are enforceable through intervention of court of law by way of issuing writs and apart from this several public rights are

¹² Keshavanand Bharati V. State of Kerala, AIR 1973 SC 1461

¹³ Supra Note 6

¹⁴ Article 324(1), Constitution of India

protected statutorily. Fourthly, the rule of law conquers through constitutional feature making every citizen equal and all laws and procedures are applied to them equally. Conclusively, it is observed that in Indian perspective all features of a democracy are available expressly and implemented in a way potential way. It may be reckoned as one of the best and true democracies of the world. Therefore, being it a true democracy, the two houses of the parliament are equipped with the provision of opposition and it has been uniquely observed that opposition in Indian democracy has been respected all the time in general course of politics, which is not so common in other democracies of the world.

In parliamentary function, the opposition has played significant role until today, and some contributions have been noted as exemplary one. Right from defending some arbitrary government actions, control of political over exercises, supporting of law making on urgent issues and many more examples have been set by opposition in Indian parliament, however, being no exception it has some unworthy acts charged on its head, which very much possible in a true democracy.

Therefore, the opposition in Indian perspective is strong, even when less in numbers, and has been respected a lot by the government of the day, undoubtedly.

4. Comparative Perspective

The comparative study of role of opposition in any political system may be distributed in developing and developed countries. However, on the basis of forms of government also the comparative study may be performed, but accurate uniformity is not generally found in governments of different countries. Further, economy is a good measurement of polity, especially when concentration is on role of opposition, so because it involves lot of policy matters requiring huge scope of intelligible differentia of opposition.

In developing countries like Afghanistan, Bangladesh, China, Pakistan, Brazil, South Africa and Mexico, the position of leaders of opposition is not so similar and nowhere, except South Africa, it is the constitutionally recognised position¹⁵. Afghanistan has no officially recognized leader of opposition, even statutorily. The same position is observed in China also. However, Bangladesh, Pakistan, Brazil & Mexico have the recognized leader of opposition but in these counties also, no

¹⁵ D.D. Basu, Select Constitution of the World, 4th Edition, 2009

constitutional recognition has been provided to the leader of opposition or opposition. Interestingly, in South Africa, earlier the leader of opposition was statutorily recognized but now it is constitutionally recognized and privileged¹⁶. Further, the role of opposition in a democracy is essential in legislative process, representation & some other functions. Keeping this in mind, Afghanistan & China has no discussion on this subject. Brazil & Mexico have better involvement of opposition in their system of governance. Bangladesh & Pakistan have better role of opposition but one thing differs i.e. religious similarity. It is not so important, where constitutional governance is practised but parliament is representative body of people and often it is elected and so religious dominance can play a role in proper functioning of opposition. Therefore, the circumstances in Pakistan & Bangladesh are a bit different from that of Brazil & Mexico, to the extent it relates to the similar position of opposition. South Africa has shown a tremendous development, in terms of providing status to the opposition by recognizing the same under its constitution. Among several developing countries, it is a landmark step in polity reforms and sensible step in order to establish a healthy democracy with a fine scope of government's criticism, when it goes for an arbitrary action.

In developed countries like Australia, Canada, France, Germany, United Kingdom & United States of America, their respective parliaments have proper position of leader of opposition¹⁷, by whatever name called, though extra constitutional in nature. It is, however, interesting to note that the position of leader of opposition in these countries are recognized officially by some statutes and there history is so long that it represents its existential significance. It has also been matter of record that existence of proper opposition has made the above noted countries politically strong in comparison of others, and such countries have led to a successful, hassle free and effective system of governance. In United Kingdom, there is no codified constitution but still their system of governance is exemplary and opposition has never become the subjection of corruption, inactive role or compromising nature, which has contributed to the development of status of governance. In USA also, role of opposition has been notable, especially in pure parliamentary function and it is evident from lesser repeal of laws, effective implication of rule of law. Therefore, it is correct to summarize that in comparative perspective of position and role of opposition, most of the developed countries have better record and developing countries have not been so articulate in their system of governance that they can be advised to run with statutory status of leader of opposition.

¹⁶ Article/Section 57(2)(d), Constitution of South Africa, 1997

¹⁷ Supra Note 15

5. Role & Requirement of Opposition in Indian Parliament

The opposition, basically, in Indian Parliament has such a wide role that sometimes, it is referred as shadow government and leader of government has been presumed as shadow prime minister, in terms of their functions entrusted.

The main functions of parliament can be divided into following categories:

- A. Law Making¹⁸
- B. Representation & Deliberation
- C. Oversight of the Executive

In above three functions for parliament the opposition have following role to play, in performing its proper duties:

A. Law Making:

The opposition has opportunity to question legislative competence of the government, to make reference of instances, to find fault in provisions of law amendments proposed and also to introduce private member's bill, in its law making functions.

B. Representation & Deliberation:

Under this head, the opposition has wider role of discussions during the sessions of parliament in the respective houses, where the opposition can deliberate any move of government, which seems to be such by them. In the history, it has played significant role in legislative process by using discussions in parliament.

Apart from deliberation, the opposition has two kinds of representation of people, one in parliament during all kind of parliamentary functions, which is general and wide. But the second one is important, which makes the Leader of Opposition in House of People (Lok Sabha), part of selection committees pertaining to Central Bureau of Investigation, Central Vigilance Commission, National Human Rights Commission and Central Information Commission, as empowered in respective statutes. Leader of Opposition in Council of States (Rajya Sabha) also is the part of selection/recruitment team in National Human Rights Commission, as empowered in its statute.

¹⁸ Article 246 & 7th Schedule, Constitution of India

Further, the role of opposition in Indian Parliament is always constructive in such a way that the opposition consists of members of parliament and they have been privileged, even in Constitution, so they can ensure people's representation through many ways.

C. Oversight of the Executive:

The Council of Ministers shall be collectively responsible to the House of the People¹⁹. In this case, the opposition has scope to question and to ask for the replies on any of the government's decision, on several grounds and the Council of Ministers has to reply them mandatorily.

Further, in Council of States, opposition may utilize the option of Questions²⁰, Half-an-Hour Discussion²¹, Petitions²², Resolutions²³, Motions²⁴, Short Duration Discussion²⁵, Raising Matters of Public Importance by using Calling Attention & Special Mention²⁶, Questions of Privileges²⁷ and several Committees²⁸ including Department Related Parliamentary Standing Committees²⁹.

In the same way, the opposition has greater scope to intervene in House of people (Lok Sabha) also, under Chapters VII (Questions), VIII (Half-an-Hour Discussions), XII (Petitions), XIII (Resolutions), XIV (Motions), XV (Short Duration Discussions), XVI (Calling Attention), XX (Privileges) and XXVI (Parliamentary Committees) of Rules of Procedure and Conduct of Business in House of People (Lok Sabha).

Therefore, it can be reduced that the role and requirement of opposition in Indian parliament is essential and of huge importance.

¹⁹ Article 75(3), Constitution of India

²⁰ Ch. VII, Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)

²¹ Ch. VIII, Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)

²² Ch. X, Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)

²³ Ch. XI, Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)

²⁴ Ch. XII, Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)

²⁵ Ch. XIII, Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)

²⁶ Ch. XIV, Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)

²⁷ Ch. XVI, Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)

²⁸ Ch. XVII & Ch. XVII-A TO C & Ch. XIX & XXIV, Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)

²⁹ Ch. XXII, Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)

6. Extended Significance of Opposition

In any country, where parliamentary form of government with multi political party system is practised, two things become significance. First, the political parties have to ensure their own party line functions irrespective of their position in opposition or in ruling alliance. Second, political parties have to fight for replacing the government by coming themselves to the power through people's vote. Now, the Council of Ministers i.e. Executive is collectively responsible to the House of the People³⁰ i.e. popular house, which also makes the government of parliament form. The function of political parties within the parliament comes under the ambit of constitutional mechanism, which is discussed earlier.

Further, the function of political parties in opposition pertaining to replacement of government is a function performed outside the parliament and it is wide, complex, ungoverned, independent & strategic. This is the extended significance of opposition in Indian democracy, which may be categorized for a study, as below:

Criticism of Ruling Party/Alliance in Government

The opposition party/alliance has interest in replacing the government and people, who voted a political party to government, have interest in proper functioning of government for the maximum welfare of people. This leads to extend the scope for opposition and on successful execution, it converts to be anti-incumbency³¹. Therefore, the ruling government has larger scope to be victimized by opposition through its extended functions. Importantly, it helps to get a ruling government dedicated to people's function, provided that opposition is successful in playing its role outside the parliament.

People Awareness

The people, who are carrying voting power, must be aware of government's rights & duties and its compliances. The communication between people and government may be strategic from the government's side, which is observed in Indian democracy, and so the role of opposition becomes vital here, which has positive and negative both aspects. The opposition is free in such situations and it leads to cross all limits, while performing their role of opposition, by convincing people in their

³⁰ Supra Note 19

³¹<https://en.wikipedia.org/wiki/Anti-incumbency>

favour. Ultimately, the positive result is the public awareness, which comes out after intervention by opposition, and it helps in deciding that to vote.

Notional Control by People

The opposition makes strong criticism of ruling government among people, of which the ruling government takes serious cognizance, which either results in the defence or in policy change by the ruling governments. Finally, it is shaped as a notional control over ruling government during its tenure being served.

Prevention of Over Ambitions of Ruling Political Party

The power is transferred to a government which is formed by a political party and that party may have over ambitions. In such situations, several actions of ruling political party lead to corruption, misuse of public resources, indiscipline & unauthorized actions. This requires a functional mechanism, which is only prevented by opposition by highlighting and criticizing such issues, as a part of their extended functions outside the parliament.

Therefore, the role of opposition in Indian Parliament, is not limited to parliament itself but also it extends itself to several aspects of balancing the ruling government, which is appreciable in a democracy like India.

7. Constitutional Outfit & Rationalisation

The functions of parliament derived from the Constitution of India are multifarious, which are discussed in earlier chapter from the opposition's role point of view, are divisible under following heads:

[(i) Legislation, (ii) Control of Public Finance, (iii) Deliberation & Discussions, (iv) Control of the Executive, (v) Removal of Certain High Officials and (vi) The Constituent Functions]³²

It is important to note that above functions include essential presence of opposition in parliament, so as to maintain [the features of basic structure of the Constitution of India]³³ & Constitutional Philosophy³⁴, in some way. [Supremacy of the Constitution, Independence of the Judiciary,

³² M P Jain, Indian Constitutional Law, 7th Edition, 2014, Page 64

³³ Supra Note 12

³⁴ Harjinder Singh V. Punjab State Warehousing Corporation, AIR 2010 SC 1116

Republican & Democratic Form of Government, Secularism, Separations of Powers between the Legislatures, the Executive & the Judiciary and Federal Character of the Constitution are some of the important features of basic structure of Constitution of India³⁵. To conquer all above the presence & role of opposition is essential.

The supreme Constitution has established a [Sovereign Socialist Secular Democratic Republic]³⁶ government in India and without opposition in parliament, which also has constituent power³⁷, the above aspirations may be inapplicable and that will be failure of constitutional mechanism.

The functions of parliament like Legislation, Deliberation & Discussions and Control of Executive have been dealt in earlier chapter, where it has expresses that importance of opposition in Indian parliament, as required by constitutional outfit. Further, the control of public finance has been subjected to the parliamentary control through constitutional mechanism itself. It includes following four principles:

[The first principle regulates the constitutional relation between the government and parliament in matters of finance. The executive cannot raise money by taxation, borrowing or otherwise, or spend money, without the authority of parliament.

The second principle regulates the relation between the two houses of parliament in financial matters. The power of raising money by tax or loan and authorizing expenditure belongs exclusively to the popular house i.e. Lok Sabha. Rajya Sabha merely assents to it. Thus, financial powers have been concentrated in Lok Sabha and Rajya Sabha plays only a subsidiary role in this respect.

The third principle imposes a restriction on the power of parliament to authorize expenditure. Parliament cannot vote money for any purpose whatsoever except on demand by ministers.

The fourth principle imposes a similar restriction on the power of parliament to impose taxation. Parliament cannot impose any tax except upon the recommendation of the executive]³⁸.

³⁵ Supra Note 12

³⁶ Preamble, Constitution of India

³⁷ Supra Note 3

³⁸ Supra Note 32, Page 68

So, in all above way of controlling the public finance through parliament, opposition has significance through constitutional mechanisms.

Removal of certain high officials like President³⁹, Vice-President of India⁴⁰, Judges of Supreme Court⁴¹ and the High Courts⁴², the Chief Election Commissioner⁴³ and Comptroller and Auditor General of India⁴⁴ are part of the functions of parliament and its power, where opposition is essential part and can play significant role by using different majority calculations, as provided by the Constitution of India in its different provisions.

The constituent function of parliament includes the amendment to the constitution⁴⁵ itself, where majority of different types is required categorically and that entails the constitutionally framed role of opposition in Indian parliament.

Therefore, it is influencing to recognize the role of opposition in Indian parliament has its constitutional outfit in different provisions and its rationalization is backed by constitutional sanction through above explained mechanisms and procedures.

8. Checks & Balances

The role of opposition in Indian parliament is significant and essential, extends beyond to feature the proper democratic status and has its constitutional outfit and also it is rationally established. The utilization aspect of opposition is based on checks & balances of the parliament and the government of the day through parliament itself. The houses of parliament are supposed to have opposition, so as to play inevitable role of criticism of ruling party through mechanisms provided in different laws. At the same time, it is also structured that the opposition is not only to render a service of criticism, but also to balance the constitutional government elected by the people. It is evident from making the Leader of Opposition part of certain selection committees and several other government appointments.

³⁹ Article 61, Constitution of India

⁴⁰ Article 67(b), Constitution of India

⁴¹ Article 124(2)(b) & 124(4), Constitution of India

⁴² Article 217(1)(b), Constitution of India

⁴³ Article 324(5), Constitution of India

⁴⁴ Article 148(1), Constitution of India

⁴⁵ Supra Note 3

Apart from this, it is highly interesting that the government of the day involves Leader of Opposition in every ceremonial convention as mandatory part. It has also been the matter of statutory practice that the Leader of Opposition has been recognized & defined⁴⁶ and his/her salary & allowances and other amenities are determined through statute⁴⁷ and in such matters, he/she has been considered as equivalent to that of a Cabinet Minister, so as to make him/her distinct, recognized and different and also to provide him a high hierarchical status.

Apart from direct recognition, the distinction of Leader of Opposition is also maintained in Indian democracy by all stakeholders despite it's not binding or statutory, which shows that the system itself has accepted the position of Leader of Opposition in positive side too, which complete the phrase of 'Checks & Balances' in Indian Parliament to the extent it relates to the opposition.

9. Epilogue

The role of opposition in Indian Parliament, while extracting its conceptual account, seems to be significant part of democracy, specifically established in Indian democracy, constitutionally outfitted & rationalized.

Further, the opposition in Indian Parliament, while establishing its relevancy, seems to be parallel, coordinative, controlling, rational, ordered, extended & hierarchically placed.

The essay iterates the importance of the whole opposition in its different roles and the structural status of parliament entails it to be highly required, in absence of which the parliamentary functions are expected to be divulged in unsystematic and unfenced manner, certainly not useful for the purpose. It is always suggested to have a critic closer to you, when you are highly successful and directly or indirectly, it cannot be denied here in case of parliament also. The effective role of opposition is synonymous to critic with multifaceted results.

The analysis has also marked that the existence of opposition may not necessarily prove it to be a strong entity in parliament until it has such performance scope and preferences from the ruling government, because it is no full-fledged independent constitutional entity. Further, it is important

⁴⁶ Section 2, The Salary and Allowances of Leader of Opposition in Parliament Act, 1977

⁴⁷ The Salary and Allowances of Leader of Opposition in Parliament Act, 1977

that in the two houses of parliament, the proceedings are not subject to judicial review by the courts and also all practise and procedure to be in conformity with the rules laid down for the purpose and decision of Speaker/Chairman of the house is final and binding. Therefore, opposition can be significant, strong and corrective only when it is intended to be made so by all its stakeholders, apart from rules.

Conclusively, opposition is one of the most important entities in Indian Parliament, which prompts and corrects the function of government through different ways. However, it is not the only side of the opposition functioning and it has scope of reforms also. It is also signifying to consider the full-fledged constitutional status of opposition in modern democracy, but it requires parallel reforms in ruling side of the government also. By the time, it is the need based induction and deduction, which takes place in any system of governance.

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