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UNDERSTANDING THE STANDING ORDERS

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UNDERSTANDING THE STANDING ORDERS

One of the basic features of the parliamentary form of Government is free discussion through multiple options on a matter under consideration. To ensure smooth and orderly debate, Parliaments maintain an elaborate system of Standing Orders, also known as the Rules of Procedure in some Legislatures, outlining various options, viz. devices such as Questions, Half-an-Hour Discussions, Calling Attention, Short-Duration Discussions, Debates on Motions and Resolutions, on Motion of Thanks on Address by the Head of the State, on Railway and General Budgets, on Confidence and No-Confidence Motions, etc. To facilitate proper functioning of the parliamentary institutions, it thus becomes essential for the Presiding Officers, Members, Political Parties, Press and all those concerned with the parliamentary work to have a proper understanding of these Orders or Rules.

The Standing Orders are part of the broader concept of parliamentary procedure. Parliamentary procedure, as defined by Erskine May, comprises, in addition to the Standing Orders, 'forms of proceeding' and the 'machinery of direction'. Procedures like various stages of passing a Bill and the process of debate by a motion are some of the examples of the forms of proceeding. Insofar as the 'machinery' is concerned, the Presiding Officers, permanent parliamentary officials, party whips and Committees of the House, among others, constitute such machinery. Standing Orders are in practice the rules which govern the working of the 'forms of proceeding' and the 'machinery' of the House.

Principles and Purpose

As procedural devices, the Standing Orders are designed to implement the basic objectives of democratic polity, which reflects fairness, justice and equality of opportunity. In the formulation of these Orders, the concepts of open access to information, due process, majority rules and minority rights are kept in focus. To attain all these goals, it is imperative that the Standing Orders are reviewed regularly with the core idea being to attain the goals of justice and equality in participation by members.

Being the permanent written rules under which the House regulates its procedure, the Standing Orders assume great significance in the smooth working of a Legislature. Their continuing or 'standing' nature means that they do not lapse on their own. They should, therefore, be based on sound principles, some of which are enumerated below:—

- The House must enjoy **complete autonomy in adopting and modifying Standing Orders**. In U.K., the House of Commons passes a formal Out-lawries Bill to assert its right of deliberating without reference to the immediate cause of summons. In India, the Constitution reaffirms this right of each House of the Parliament as under:

Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business. [Article 118(1)]

- It is to be ensured that **all members are equal in terms of use of Standing Orders for participating in the proceedings of the House** or in the determination of a question before the House. In practice, however, considerations of economy of time and speedy disposal of business before the House may put restraints on the equal rights of members. For example, in India, where members belonging to 42 political parties in the current Lok Sabha constantly compete to air their views on a vast array of issues, it is very difficult to accommodate all demands for participation. The Chair, therefore, plays an important role in maintaining a balance among these demands.
- **The Standing Orders need to be so designed that fruitless discussions are avoided**. There is thus the requirement of giving of notices with the requisite notice period to facilitate advance intimation to the Government and to other members for the purpose of meaningful interaction; conditions of admissibility of the notice; listing of different items on the Order Paper and restricting debate only on the listed items on the day's Agenda.
- Another important principle of Standing Orders is **expedition in the disposal of the business before the House**. Provisions regarding extension of the sittings beyond the usual hours, arrangement of Committee meetings during Sessions of the House and fixation of suitable time for disposal of an item, etc. are some of the examples in this regard.
- It is mandatory that decorum be maintained in parliamentary proceedings. For this, a comprehensive set of **rules for decorous behaviour needs to be part of the Standing Orders**.
- It is imperative that the **Rules or Standing Orders are constantly monitored and reviewed to accommodate the needs of the time and to cope with the emerging realities**.

- Rules have to take into consideration the **native realities of individual countries**. A particular rule in country X need not be viable in country Y. What is important is that the Rules should emerge out of a country's experience and immediate realities.
- There should be a balance between the rights of the majority and those of the minority on the basis of the **principle of reasonableness**. The rules that empower the majority, allowing it to rule, and the rules that protect the minority, allowing it to oppose, stand the test of reasonableness in practice. There are various Standing Orders and Rules which the minority may make use of in playing its role efficiently. These rules –the right to information, the right to receive advance notice, the right to debate and the right to vote and many more – all serve to protect the minority.

Parliament is sole judge of its Standing Orders

In India, Parliament is sovereign within the limits assigned to it by the Constitution. There is an inherent right in the House to conduct its affairs without any interference from an outside body. Article 105 of the Constitution specifically bars the jurisdiction of courts of law in respect of anything said or any vote given by a member in the House.

In the matter of judging the validity of its proceedings, the House has exclusive jurisdiction. Articles 122 and 212 of the Constitution of India provide that the validity of any proceedings in Parliament or a State Legislature cannot be called in question in any court on the ground of any alleged irregularity of procedure. Further, no officer or member of Parliament in whom powers are vested for regulating the procedure or the conduct of business, or for maintaining order in Parliament, is subject to the jurisdiction of any court in respect of the exercise by him of those powers. The Allahabad High Court in this regard has held:

.....This Court is not, in any sense whatever, a court of appeal or revision against the Legislature or against the ruling of the Speaker who, as the holder of an office of the highest distinction, has the sole responsibility cast upon him of maintaining the prestige and dignity of the House. (Raj Narain Singh vs. Atmaram Govind Kher Case, AIR, 1954, Allahabad 319)

Rule 388 of the Rules of Procedure and Conduct of Business in Lok Sabha stipulates that the House may depart from the procedure at its own discretion. The House has also the collective privilege to decide what it will discuss and in what order, without any interference from a court of law. The Allahabad High Court has also held:

.....It is well known that no writ, direction or order restraining the Speaker, from allowing a particular question to be discussed, or interfering with the legislative processes of either House of the Legislature or interfering with the freedom of discussion or expression of opinion in either House can be entertained. (Raj Narain Singh vs. Atmaram Govind Kher Case, AIR, 1954, Allahabad 319)

The Kerala High Court has, however, in its full Bench decision held:

The immunity envisaged in article 212(1) of the Constitution is restricted to a case where the complaint is no more than that the procedure was irregular. If the impugned proceedings are challenged as illegal or unconstitutional such proceedings would be open to scrutiny in a court of law. (State of Kerala vs. R. Sudersan Babu and Others Case, I.L.R., Kerala, 1983).

The term "proceedings in Parliament" covers both the asking of a question and the giving of written notice of such question, motion, Bill or any other matter and includes everything said or done by a member in the exercise of his functions as a member in a committee of either House, as well as everything said or done in either House in the transaction of parliamentary business.

A proper understanding of the Standing Orders or the Rules of Procedure as well as the practices and the conventions of the House by members is, therefore, necessary for them to discharge their parliamentary duties effectively.

Speaker and Standing Orders

During the proceedings the Speaker takes care of the rights of all members, allowing the Ruling Party to rule and the Opposition to be heard, and ensures that decorum in remark and action is maintained, that the agenda is followed, and the proceedings continue with due efficiency. Presiding over the deliberations of the House is a learned skill, and there are many rules and techniques which the Speaker can rely upon. It is, therefore, one of the foremost and natural duties of the Speaker to decide all issues relating to the Rules or the Standing Orders.

Rulings : In India, the Rules of Procedure and Conduct of Business in Lok Sabha are quite comprehensive but not exhaustive. In exercise of his powers relating to application of rules to specific issues, contexts and points, the Speaker has to satisfy that the concerned Rules are appropriately applied. The observations of the Speaker that emanate from such applications, generally known as rulings, are authoritative and followed by the House.

Directions : Over the years, the Speakers' rulings have facilitated smooth working of parliamentary business and greatly enriched the domain and spirit of the Standing Orders. All questions relating to the detailed working of the rules are regulated in such manner as the Speaker, from time to time, directs. These directions are compiled and published for guidance. However, the Speaker has only those powers which are assigned to him by the House or the rules. He cannot start a new procedure on his own.

Relaxation of Rules : The Speaker enjoys an inherent power to relax rules for the smooth conduct of business of the House.

In the Lok Sabha, the first hour is devoted to Questions. There are, however, occasions when a section of the House is very much agitated on a sensitive issue of public importance and wants to raise it at the first opportunity, *i.e.* as soon as the House meets. As denying them this opportunity would mean commotion in the House and wastage of the precious time of the House, the Chair has at times allowed the members to have their say very briefly and thereafter the House takes up the listed business, *i.e.* Questions. In this regard, the role of "Zero Hour" as an innovative procedural device is also very significant. Though not part of the rules, it provides an effective method of raising important matters that have developed suddenly and agitated the minds of members.

Residuary Powers : The Speaker has the power to deal with all matters which are not specifically or adequately provided for in the Rules. All matters relating to the detailed working of the Rules are also regulated by the Speaker. In exercise of these powers the Speaker issues directions from time to time. The Speaker also gives rulings on departmental files on specific matters or issues which arise from time to time and on which he is required to give decisions.

Suspension of Rules

Parliament is supreme in readjusting its procedure. Insofar as suspension of a particular rule is concerned, rule 388 of the Rules of Procedure and Conduct of Business in Lok Sabha provides that any member may, with the consent of the Speaker, move that any rule may be suspended in its application to a particular motion before the House and if the motion is carried the rule in question shall be suspended for the time being. Though, as per rule, a motion is required for this purpose, the Speaker may, if he is of the opinion that there is unanimity in the House, declare the suspension of a particular rule without even moving of a formal motion.

Secretary-General's Contribution

In India, the position of the Secretary-General of the Lok Sabha is unique. He is expected to know everything that has any reference to the business of the House, whether it relates to some constitutional point or the proper precedent that should be followed in certain given circumstances. Parliamentary procedure goes on changing indiscernibly day-to-day and the Secretary-General's contribution to the building up of this procedure is significant. Whether taking his place at the Table, assisting in Committee or dealing with the day-to-day business of the House, the Secretary-General becomes very well known to members who turn to him for his advice on points of law and procedure.

Members and their Parliamentary Duties

The performance of a member is determined by his ability and competence to participate and contribute in the proceedings of the House. An orientation in the Standing Orders or Rules adopted by the House for its functioning thus becomes imperative for him. As a legislator, he must understand the Standing Orders in their full spirit to comprehend when and how to bring up a matter he wants the House to take note of. The time at the disposal of the Parliament being limited, it is all the more essential that the members are conversant with such Orders.

To illustrate, notices of amendment to a clause or Schedule of a Bill can be given under the Rules of Procedure of the Lok Sabha after the introduction of the bill in the Lok Sabha, or after a copy of the Bill, as passed by the Rajya Sabha, has been laid on the Table of the Lok Sabha. The outer limit for giving such notices is one day before the day on which the Bill is listed in the Agenda for consideration and passing. The outer limit has been fixed to enable the Secretariat to examine the amendment, get it printed and circulate it to all the members for their information. Members get ample opportunity to give notices of amendments as, normally, there is a sufficient time-gap between the introduction of a Bill and its consideration and passing by the House. There have, however, been several instances when members who were not fully conversant with the rules, gave notices of amendments to a Bill on the day it was listed in the Agenda for consideration and passing. Such notices, being time-barred, had to be disallowed.

Similarly, two different procedures are laid down in our Rules of Procedure for processing notices of Adjournment Motion and notices under other rules, such as, rule 184 (No-Day-Yet-Named Motions), rule 193 (Short Duration Discussion) and rule 197 (Calling Attention).

All the notices of Adjournment Motion on a subject received upto 1000 hours on a day are balloted to determine their relative priority. Notices for raising discussion by way of Motions, Short Duration Discussions, Calling Attention, etc. are, however, treated on the basis of their time of receipt in the Office. Members who are aware of this difference always try to give notices on various subjects at the earliest so that they get an opportunity to raise the matter on the floor of the House if the subject is selected by the Business Advisory Committee for discussion.

Rule 197 contains procedure regarding Calling Attention Notice whereby a member may, with the consent of the Speaker, call the attention of a Minister to a matter of urgent public importance and request the Minister to make statement thereon. The rule provides that each member in whose name the item stands in the List of Business may, with the permission of the Speaker, ask one clarificatory question and that names of not more than five members shall be shown in the List of Business. This means that only five members whose notices were received first shall get an opportunity to ask clarificatory questions.

Similarly, for a Half-an-Hour Discussion, a member has to give a notice within three days of raising of the matter in the House and at least three days in advance of the day on which he desires to raise the matter. Further, the rule provides that not more than four members who have previously intimated the Secretary-General may be permitted to ask a question each. This requires the members to be vigilant at the moment a Half-an-Hour Discussion is admitted, to intimate the Secretary-General before the commencement of the sitting at which the discussion is to take place about their intention to ask questions. The objective is that members should know rules fully as a proper understanding of the procedure in its totality enables them to perform their roles efficiently.

Further, it is essential to know not only the Rules but also conventions and practices that might have evolved over the years with regard to certain rules or procedures. To give an example, in the Lok Sabha, members may give notices of amendments to the Motion of Thanks on the Address by the President. A very large number of such notices are usually received. Such amendments which are admissible under the Rules are admitted, printed and circulated to the members for their information. A practice has, however, evolved whereby when the Motion of Thanks has been moved and the mover and the seconder of the Motion have finished their speeches, an announcement is made from the Chair requesting the members who have given notices of amendment to the Motion to send slips at the Table of the House within the specific 15 minutes indicating serial numbers of their amendments which they would like to move. Only such amendments for

which slips are received from members within the stipulated time are treated as having been moved and are disposed of by putting them to the vote of the House before the Motion is put to vote. This practice has been evolved to save the time of the House as the number of amendments received is very large. Only those members who are aware of this practice can exercise their right of moving the amendments by remaining present in the House at the appropriate time and by sending slips at the Table.

Swearing in of Members

Article 99 of the Constitution of India provides that every member of either House of Parliament shall, before taking his seat, make and subscribe an oath or affirmation. Further, Article 104 stipulates penalty for sitting and voting before taking oath or affirmation under Article 99. Rule 5 of the Rules of Procedure and Conduct of Business in Lok Sabha further provides that a member who has not already made and subscribed an oath or affirmation in pursuance of Article 99 of the Constitution, may do so at the commencement of a sitting of the House, or any other time of the sitting of the House, as the Speaker may direct. All new members need to be vigilant about these provisions.

Division

In the Lok Sabha, questions are generally decided by voice vote unless a member challenges the opinion of the Speaker and a division is demanded, in which case the Speaker orders a division. When a question is decided by voice vote, the Speaker does not announce the number of 'Ayes' and 'Noes'. Insofar as the procedure of division is concerned, Rule 367 provides that when the debate on a motion concludes, the Speaker puts the question and invites those who are in favour of the motion to say 'Aye' and those against the motion to say 'No'. The Speaker then says: 'I think the Ayes (or the Noes, as the case may be) have it'. If the opinion of the Speaker as to the decision of a question is not challenged, he says twice: 'The Ayes (or the Noes, as the case may be) have it' and the question before the House is determined accordingly. If the opinion of the Speaker as to the decision of a question is challenged, he orders that the Lobbies be cleared. After the lapse of three minutes and thirty seconds which is the time for clearing of Lobbies, he puts the question a second time and declares whether in his opinion the 'Ayes' or 'Noes' have it. If the opinion so declared is again challenged, he directs that votes be recorded either by operating the automatic vote recording machine or by using 'Aye' and 'No' slips in the House or by the members going into the Lobbies. Normally, divisions these days are held by operating the automatic vote recording machine. Divisions by members going

to Lobbies has now gone into disuse. Therefore, members should have adequate knowledge of operating the automatic vote recording device.

Parliamentary Etiquette

In order to maintain the highest traditions in parliamentary life, members need to observe a certain standard of conduct, both inside and outside the House. The conduct of members should not be derogatory to the dignity of the House or in any way inconsistent with the rules, Parliament has set for its members and rulings given by the Speaker from time to time. A member should be conversant with all such rules lest he should be guilty of unwittingly committing a breach of parliamentary etiquette. The following are some of the important rules of parliamentary etiquette which members have to observe in the Lok Sabha while the House is sitting:

- A member is not to read in the House any book, newspaper or letter except in connection with, or necessary for, the business of the House.
- While the House is sitting, every member should enter and leave the Chamber with decorum.
- A member is to bow to the Chair, while entering or leaving the Chamber, and also when taking or leaving his seat. This respect is for the whole House, not for an individual occupying the Chair.
- Every member has to resume his seat as soon as the Speaker rises to speak, or calls out 'order' and addresses the House. Members are not to cross the floor, walk, stand, enter or leave the Chamber when the Speaker is on his feet.
- A member is always to address the Chair. The practice of exchanging arguments by members between themselves has been deprecated by the Speaker.

Automatic Suspension of Members

To discourage incidents of pandemonium in the House, which were unfortunately on ascendancy of late, a new Rule, *i.e.* Rule 374A, was incorporated in the Rules of Procedure and Conduct of Business of Lok Sabha in December 2001 providing for automatic suspension of a member, without the usual requirement of adoption of a motion by the House to this effect, for persistently and wilfully obstructing the business of the House. Though this new rule has not been applied in any case in the Lok Sabha so far, it certainly has had a deterrent effect. This has been not only because of its inclusion in the Rules Book but also because there was unanimity among Presiding Officers,

Leaders, Whips and members for its incorporation in the Rules. As a result of the constant endeavours of the present Speaker, Mr. Manohar Joshi to strike a fine balance between members' right to be permitted to raise matters in the House and the need to maintain discipline and decorum with the cooperation of Leaders of Parties, there has been a considerable decline in the wastage of time resulting out of incidents of pandemonium and indecorous behaviours of some members leading to adjournments of the House. For example, while during the Winter Session (November-December) of 2000, 34.6% of the total time of the House was wasted because of adjournments of the House, the figure for the Winter Session of 2002 declined to a mere 0.3%. Similarly, the wastage of House time during the Budget (February-May) Session of 2003 was only 2.2% as compared to 40.2% of the total time of the House lost during the Budget Session of 2001.

Members and their Privilege

To enable the House to perform its functions without any restraint, the House and its members are granted under Articles 105 and 194 of the Constitution certain privileges like freedom of speech, freedom from arrest, etc. to enable them to perform their duties without any hindrance. Several decisions of the House, Speakers' rulings and court judgments on privilege issues are available which need to be properly understood and appreciated by the members for the effective performance of their legislative duties.

Points of Order

A point of order is an important process which is meant to assist the Speaker in enforcing the rules, directions and provisions of the Constitution. It generally refers to procedure and relates to the business of the House at a given moment. Also, it relates to arrangement of items already included in the list of business of the day. The test whether a point raised is a point of order or not is whether it involves an interpretation of Rules, Directions and provisions of the Constitution and whether it raises a point which the Chair can decide. There can be no point of order in a vacuum. It cannot be raised when a question on any Motion is being put to the House and also during the Question Hour. While formulating his point of order, the member should quote the specific rule or the provision of the Constitution which may have been ignored or neglected or violated. The decision of the Speaker with respect to the point of order is final. No debate is allowed on a point of order, but the Speaker may, if he thinks appropriate, hear the members before giving a decision.

Beyond Standing Orders

A legislator as the representative of the people can best interpret their thinking. Sometimes, he requires support in performance of his duties which the Secretariats, in most cases, readily make available. For example, in the Lok Sabha, the Library, Research, Reference, Documentation and Information Service (LARRDIS) makes available a variety of information services and products to members on demand and in anticipation with the basic aim being to enable members to perform their legislative role in a more effective manner. Besides, the Legislative Branch of the House *inter alia* helps members in drafting Private Members' Bills, guiding them in respect of intricacies of various notices, making available to them forms for different types of legislative business. Besides, this Branch also helps them in other day-to-day matters which are not covered under the rules.

Political Parties

Political parties are bodies which compete to control political power in legislative institutions. To achieve the desired targets, it becomes imperative for them to establish competent structures within the House that are conversant with the Standing Orders. In this regard, the role of the Whips appointed by various political parties is extremely important. In England, the practice of 'Usual Channel' is used for ensuring order and allocation of time for different kinds of business in the House. These routines coupled with intra-party training of their members in the intricacies of the Standing Orders require a well-organized and continuous approach.

Press/Media

Parliament and the Press have a common responsibility to work for the welfare of the people in initiating informed debates on various issues coming up before the polity. In India, freedom of the Press and the members of Parliament have been ensured through various constitutional provisions. However, in view of the privileges of the House and its members, the freedom of Press is subject to certain checks. For example, publication of such portions of the debates as have been expunged from the proceedings of the House by order of the Speaker is a breach of privilege and contempt of the House, and accordingly punishable. Similarly, the Press has also to guard itself against printing or publishing any libels casting reflections on the character or proceedings of the House or its Committees, or on any member for, or relating to, his character or conduct as a member of Parliament, as such publication would constitute a breach of privilege and contempt of the House. Besides, the publication of false or distorted, partial or injurious report of debates or proceedings of the House or its Committees or wilful misrepresentation or suppression of facts, is an offence of the same

character as the publication of libels upon the House, its Committees or members; and the persons who are responsible for such publication are liable to be punished for a breach of privilege or contempt of the House.

The Press should, therefore, acquaint itself with the rules of procedure to avoid coming into conflict with such privileges. The Committee of Privileges, in their thirteenth Report presented to the House on 11 August 1961, reported *inter alia*.

It must, however, be remembered that being only a right flowing from the freedom of speech and expression, the freedom of the Press does not stand on a higher footing than the freedom of speech and expression enjoyed by a citizen and that no privilege attaches to the Press as such, that is to say, as distinct from the freedom of speech and expression of a citizen. Actually, a newspaper writer should be more cautious than a private citizen as his criticisms are widely publicized.

Training and Orientation

Parliamentary democracy has developed during the course of its evolution some highly sophisticated procedures and processes. Policy makers, legislators, administrators and different functionaries at various levels involved in the democratic set-up, therefore, need to be trained in the tenets, tools and operational mechanics of parliamentary institutions. Moreover, their attitude has to be oriented to the needs, responsibilities, tenor and temper of parliamentary institutions. The task of carrying out the necessary studies and imparting the required orientation and training primarily falls on the Parliament itself. In India, the Bureau of Parliamentary Studies and Training (BPST), set up on 1 January, 1976 as an integral part of the Lok Sabha Secretariat is designed to meet this need to provide the legislators and officials with institutionalized opportunities for problem-oriented studies and systematic training in the various disciplines of parliamentary institutions, processes and procedures.

To conclude, a well-established system of Standing Orders as a source of continuity in the procedure help in ensuring consistency and effectiveness in parliamentary debates and also enables Parliaments to effectively fulfil their prime job of formulation of public policy.