

Unit 6: Parliamentary Committees and Scrutiny of the Executive

Learning Objectives Why Committees Matter

After studying this unit, you should be able to:

- Understand the purpose, role and functions of parliamentary committees;
- Understand why and how committees are established;
- Distinguish between the various types of committee;
- Explain how committees scrutinize the work of the Executive;
- Understand how committees operate and how they report back on completion of their work;
- Discuss the roles and responsibilities of the chair and Members of a committee;
- Consider resource requirements for fulfilling the responsibilities of a committee.

Introduction: What are Parliamentary Committees?

Parliamentary committees consist of groups of Members of Parliament (MPs) which are established by parliament to carry out specific tasks or functions that are committed to them. Committees are established for a variety of purposes. One of the most obvious is that a committee permits parliament to stretch its resources both in terms of people and of time to inquire into issues in ways that the full House would find cumbersome. In addition a less adversarial atmosphere might be found in a committee than in the full House of Members, which aids reaching a consensus on issues. In these smaller groups Members can also utilize or develop expertise in the committee specialty. Experts can also be called to committee meetings allowing parliament to apply skills that cannot be utilized during plenary sessions. An increasing number of parliaments hold their committee meetings open to the public and may also allow for input from the public through various mechanisms to increase citizen engagement. All this explains that meetings of committees, while attempting to observe the usual standards of parliamentary debate, can proceed more informally and expeditiously than plenary sessions and

benefit from the relationships that develop among persons working together in order to achieve common objectives.

While most committees are made up of small numbers of MPs, parliament may also use the device of meeting as a Committee of the Whole House, during which all Members of Parliament may attend. This happens in cases of great importance or urgency or to save time in the consideration of non-controversial legislation.

The work delegated by the House to committees usually relates, as will be detailed later, to the examination of bills, the scrutiny of the operations of the executive or the investigation of some issue of public concern.

Types of Committees

The nomenclature of committees varies greatly within the Commonwealth, even to the extent that the same term may have different meanings in different legislatures. A classification will be attempted in this case, which should be a sufficient base for the purposes of this unit provided that this problem is allowed for in applying the discussion to any particular parliament.

The two epithets that are most commonly applied to committees are 'standing' and 'select'.

In most countries, the term standing committees refers to those committees that are set up to scrutinize bills or to examine delegated legislation, as well as committees that are set up for special purposes, for instance, the Committee on Public Accounts (commonly referred to as the Public Accounts Committee or PAC), or those monitoring the work of government departments. These Committees are most generally established for a parliamentary session but, according to the practice of various legislatures, their life may be as short as the consideration of one specific bill or as long as the life of the parliament.

Select committees are constituted with very specific terms of reference to deal with issues of major public concern. For instance, a parliament may set up a committee to examine a particular bill, to inquire into the behavior of a senior public official, to consider proposals for research on the human embryo or to scrutinize development proposals with wide-ranging objectives or consequences.

Most countries now have committees examining or monitoring the work of government departments. They may fall under either the select or standing committee categories depending on the practice in the country concerned, or they may be described separately as departmental, portfolio or consultative committees. The existence of these committees allows parliament to follow and inquire into the trends of governmental activity as they take shape, instead of being limited to commenting post hoc on the implementation of government policy by the departments they scrutinize. Further, as they inquire into current issues, they can make an important contribution to policy development, possibly ahead of the work of government.

All parliaments have some sort of committee arrangement to advise or assist with their own domestic and administrative concerns. They may include a committee on parliamentary business, a House committee dealing with matters related to the comfort and convenience of Members, a Library Committee, a Catering Committee and so on.

Where parliament consists of two Houses, it is usually possible and efficient to establish joint committees to examine issues affecting both Houses, for instance matters concerning parliamentary privilege.

Most parliaments formally provide for some of their committees to create subcommittees of their membership when this appears to be a sound way to carry out their duties. The Public Accounts Committee is a good example of one that often needs to use this facility to proceed expeditiously and efficiently with its work.

While much of the work of parliamentary committees will relate to the review of bills, they are also entrusted with scrutinizing how the executive implements the law with particular attention paid to accountability. This is referred to as parliamentary scrutiny or oversight of the executive. The theory is that a committee will perform this function using the evidence placed before it in a less adversarial manner resulting in a bipartisan (government/opposition) consultative effort to improve the performance and accountability of the executive.

Establishment of Committees

The setting up of committees is not a matter of constitutional procedure or design. They are established under the Standing Orders of parliament and reflect the evolution of each parliament's practice. The full gamut of committees that are normally set up in a parliament may be specified in the Standing Orders with allowance for additional special committees as required. The general practice is that Committees of the Whole House are formed by resolution of the House. A Committee of Selection usually establishes the membership of other committees, itself sometimes chaired by the Speaker, but invariably comprising the leaders or chief whips of political parties. Standing Orders in certain parliaments reserve to the Speaker the right of nomination to certain committees. It is the practice in some parliaments for the government Chief Whip to table an agreed list of nominations to certain committees and to seek the agreement of the House for those appointments.

The number of Members serving on a committee is also set out in Standing Orders or is established by convention. However the usual practice is that the proportion of Members roughly mirrors the position in the House.

Parliament may restrict the number of committees, or the number of committees of a particular type, on which a Member may serve at any given time or during a parliamentary session.

The chairman of a committee may be elected by the committee, or be appointed as otherwise designated in the Standing Orders, usually by the Speaker. In some parliaments, the Speaker may be nominated as chairman of certain committees such as the Committee of Selection or of a domestic committee. But in others, the Speaker does not ever preside over a committee, even that of the Whole House.

In many Commonwealth parliaments, the chairmen of committees are appointed from the governing party though some parliaments spread the responsibilities of chairmanship in proportion to party strengths in the House. However in most there is a convention that a member of the opposition chairs the Public Accounts Committee. The convention extends to the similar Committee on Public Undertakings (or Public Enterprises) in those legislatures that have decided to appoint committees with that responsibility.

Even if Standing Orders do not specifically prohibit it, Ministers and their deputies are not usually appointed as Members of committees. Their volume of work outside parliament as a Member of the executive would itself militate against this. However they do sometimes serve, for instance, in small legislatures where non-office holders (private Members) are so few that the operation of committees would become impossible.

There is a recent development in some parliaments for Ministers to be appointed not only to serve but also to chair certain committees. These are the cases of consultative departmental committees where the idea is that parliament would keep the working of Ministries under constant review by ensuring that the Minister is required to report in this manner to the committee.

How Committees Operate

Committees are set up to examine and report on matters referred to them by the House or by the Standing Orders under which they are established. The chair has the responsibility to ensure that the committee undertakes the work referred to it.

The schedule of meetings is prepared in each legislature and takes into account when the committee may meet. A specified quorum is invariably necessary, as in the House, but while committees try to observe procedures as close as possible to those of the House, there are important variations. For example, Members are allowed to speak more than once on the same topic. The chair may be allowed an original vote (sometimes called a deliberative vote) in addition to a casting vote in the event of a tie. Less importantly, though quite significant, the arrangement of seats is more geared toward the carrying out of discussion in as consensual a manner as possible rather than reflecting the more adversarial arrangements in the main House.

Committees have very broad powers to send for persons, papers and records and may meet in places other than the committee rooms in the House. This enables inquiries to be made without

delay with the assistance of experts and other witnesses where necessary. Each legislature has to decide for itself whether the persons who may be summoned include Members of the House, and the extent to which calls may be made for papers and records in government departments. Answers to these issues have evolved in most legislatures through a process of pragmatic cooperation.

Any persons attending parliament in order to give evidence are protected by parliamentary privilege from interference or disturbance that is designed to deter or prevent them from doing so. As a corollary to this, legal proceedings in the courts cannot be brought against witnesses who have given evidence.

An important consideration for a legislature is whether meetings of committees should be open to the public. The pros and cons are fairly obvious: open meetings may prevent or inhibit exactly the kind of compromise and non-adversarial quality of discussion which committees seek to achieve, while on the other hand, the prevention of access to meetings may be seen as an important factor in low citizen engagement in the democratic process. Some legislatures that do not allow Members of the public access to meetings find a halfway solution by allowing public access to the records of meetings. Some legislatures provide for committees to deliberate in private but to collect inquiry evidence publicly. For example, they may authorize publication of written submissions and conduct hearings that are open to members of the public.

Where committees are allowed by Standing Orders to set up Subcommittees for the better and more expeditious performance of their functions, these would operate with the same powers as the parent committee. The Public Accounts Committee is one that often operates through subcommittees because of the wide-ranging nature of its work.

Committees may report back to the House in various forms. Committees considering bills will obviously report on any amendments they propose. Committees set up for special purposes will report on the results of their review. However there is great variation in practice about whether reports should be unanimous or not, the timing of reports, their presentation to the House, and whether debate will take place in the House on the reports. Scrutiny committees find it very frustrating that there is often no mechanism for follow-up on their reports, though some

countries have set up Committees on Assurances to check that the administration does indeed report on action taken following a demand from parliament to rectify some faulty procedure. A government may undertake to provide a formal response in the House within a certain period of time to the recommendations that have been made by a committee and may also report on its outstanding responses to reports. Similarly the House may receive from time to time reports on responses that are awaited.

Scrutiny and Oversight

In the congressional system, committees have a very important role to play in reviewing legislation and scrutinizing the work of the executive. In the Westminster model, the executive is chosen from members of the legislature. While therefore the review of draft legislation may be limited in its scope, there is no reason why this should extend to scrutiny.

Parliamentary control or oversight refers to checks on the implementation of the law by the executive. This can also mean the investigation of some particular issue or controversy but in this section the term is used to refer to the work of those committees that scrutinize the regular work of the executive.

Apart from departmental or consultative committees, the two most important committees established on a continuing basis for this purpose are the committee on Public Accounts (PAC) and the Committee on Public Undertakings (or Public Enterprises).

The function of these committees is to examine the expenditure of the sums granted by parliament for the work of government, and periodically to report on the accounts of the bodies concerned, their procedures, and their management. The PAC would concentrate on government departments while the Committee on Public Enterprises/Undertakings would turn its attention to nationalized industries and other corporate bodies in which the government has a major stake. These are huge responsibilities and no committee will ever claim to have made a full survey of the issues of its time. In order to make some success of its work, a committee would depend heavily on the reports of the Auditor-General (in some countries known as the

Comptroller and Auditor-General) whose duty is to certify and report on the accounts of government departments and public undertakings. The Auditor-General's work is so sensitive that the post is usually a protected one under the constitution of most countries so that it may preserve the official's independence and freedom. These operations are so bound up with the parliament's function of financial scrutiny that the Auditor General is given the prerogatives of an officer of parliament, though not appointed by or subject to its administration. It is often recommended that the Auditor General should not be seen as a government auditor but as a full-time officer of parliament and that the PAC in particular should have the responsibility for guaranteeing his independence.

It is important for the work of the PAC that the accounts of government departments and public undertakings are made available as soon as practicably feasible. Sadly this is not often the case in many countries of the Commonwealth and these committees can find themselves examining accounts of a bygone administration.

While it is important for the committee to examine such matters as excesses on approved expenditure and to report them to parliament, it is also realistic and useful for committees to use the comments of the Auditor General as a vehicle for the discussion of measures to obtain value for money in the future.

One of the problems for committees involved with scrutiny is that there is often a heavy turnover of Members that works against the continued efficiency of such committees. The reason given with regard to the PAC is that there are few political rewards from its membership, and some countries, in an effort to raise the status of the PAC to a position of eminence amongst committees, make a special remuneration to the chairman. Another question for Members has been whether they possess sufficient skills for carrying out their work and whether some form of training would not help to improve their contributions.

There has been some disquiet expressed about the real effect of scrutiny committees, namely, whether systematic and sustained scrutiny of the executive is achieved and whether government accountability to parliament and the transparency of government operations has been increased by the work of these committees. Most parliaments need to examine their own

records of performance because they do not sufficiently ensure the tabling of reports, debate on them thereafter, or follow-up on recommendations for action.

Staffing and other Resources

If a committee is to perform its functions satisfactorily, it must be assured of sufficient administrative and research support for its work. The Standing Orders may go no further than to require the Clerk (or Secretary-General) of parliament to serve, or to provide a nominee to serve, as the secretary to the committee. Almost as an unintended corollary, there has in general been very little effort in Commonwealth parliaments to ensure that adequate resources of staff and material are available for the work of the many committees that are set up ad hoc or required on a continuing basis by Standing Orders.

In the more mature legislatures, it is not uncommon to find 10 or more staff available to service a particular committee. This enables not only time to attend to the huge amount of administrative work involved in the organization of a committee's operations, but also the necessary back up research. The general finding is that committees are far less generously staffed. Even in some countries that could afford better, it is regularly heard that inadequate staffing makes the work of most committees difficult. Since parliament is itself in a very powerful position to provide the necessary resources, there is always the suspicion that governments (and possibly, those who aspire to being in government some day) are quite happy to limit the capacity of the legislature to increase its investigative powers and its ability to hold the government accountable.

If a legislature is to make its committees more operationally effective, it must

- (a) Estimate the staff and material requirements for each committee it sets up and provide those resources accordingly;
- (b) Allow for the possibility that staff Members may have to carry out dual responsibilities (for other committees at the same time) in the estimation of required staff;

- (c) Ensure that the staff appointed are sufficiently trained for all aspects of their work, from preparing agenda as required by the chairman or committee to keeping records and summoning witnesses;
- (d) Determine whether the research work for the committee can be done by the same staff and whether they have access to information and communication technologies which will enable them to efficiently carry out such responsibilities in research, or whether additional staff should be recruited even on a temporary basis (this will not preclude the expert assistance of other specialists being needed as the work of a committee proceeds).

Conclusion

Committees play a large role in the day-to-day work of parliaments and provide an opportunity for Members to use their particular skills and to nurture their individual interests. They allow legislatures to pay closer attention to such matters as the details of bills or the work of the executive than would otherwise be possible. The nomenclature, number and functions of committees must suit the needs and resources available to each parliament. If they are suitably resourced and take their responsibilities seriously, they can make a very large contribution to the operations of parliament, to the greater engagement of society in the business of legislation and ultimately, to the enhancement of the status and dignity of parliament.

Unit 6 Questions

Please answer each of the following questions. If you are taking this course in a group you may then meet to discuss your answers.

1. Explain the committee structure in your parliament.
2. Do you consider that it is suited to the needs of your country?
3. How may society – individuals as well as groups – contribute through committees to the work of the legislature? Is this considered desirable?
4. Do you think that the function of parliamentary oversight of the executive is carried out efficiently and efficaciously?

Relevant Abbreviations

CPA	Commonwealth Parliamentary Association
IPU	Inter-Parliamentary Union
NDI	National Democratic Institute for International Affairs
UNDP	United Nations Development Program
WBI	World Bank Institute

Relevant Internet Resources

Australia's House of Representatives Practice <http://www.aph.gov.au/house/pubs/PRACTICE/Index.htm>

Report of a CPA Workshop on Parliamentary Oversight
www.cpahq.org/uploadstore/docs/parliamentaryoversightoffinance.pdf

Pelizzo, R. and Stapenhurst, R. (2004). Tools for Parliamentary Oversight
http://econ.worldbank.org/files/38161_wps3388.pdf

UNDP (current). Legislative Committee System
<http://www.undp.org/governance/parldev/docs/legiscomm.doc>

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www.worldbank.org/devforum/forum_oversight.html

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