

Role of Empirical Evidence in Law-Making: Case Study from India

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Abstract : In India, on average, about 60 Bills are passed every year in both Houses of Parliament - Lok Sabha and Rajya Sabha (calculated from information on websites of both Houses). These are debated in both Lok Sabha (House of Commons) and Rajya Sabha (Council of States) before they are passed. However, lawmakers rarely use empirical evidence to make a case for a law. Most of the time, they support a law on the basis of anecdote, intuition, and common sense. While these do play a role in law-making, without the necessary empirical evidence, laws often fail to achieve their desired results. The quality of legislative debates is an indicator of the efficacy of the legislative process through which a Bill is enacted. However, the study of legislative debates has not received much attention either in India or worldwide due to the difficulty of objectively measuring the quality of a debate. Broadly, three approaches have emerged in the study of legislative debates. The rational-choice or formal approach shows that speeches vary based on different institutional arrangements, intra-party politics, and the political culture of a country. The discourse approach focuses on the underlying rules and conventions and how they impact the content of the debates. The deliberative approach posits that legislative speech can be reasoned, respectful, and informed. This paper aims to (a) develop a framework to judge the quality of debates by using the deliberative approach; (b) examine the legislative debates of three Bills passed in different periods as a demonstration of the framework, and (c) examine the broader structural issues that disincentive MPs from scrutinizing Bills. The framework would include qualitative and quantitative indicators to judge a debate. The idea is that the framework would provide useful insights into the legislators' knowledge of the subject, the depth of their scrutiny of Bills, and their inclination toward evidence-based research. The three Bills that the paper plans to examine are as follows: 1. The Narcotics Drugs and Psychotropic Substances Act, 1985: This act was passed to curb drug trafficking and abuse. However, it mostly failed to fulfill its purpose. Consequently, it was amended thrice but without much impact on the ground. 2. The Criminal Laws (Amendment) Act, 2013: This act amended the Indian Penal Code to add a section on human trafficking. The purpose was to curb trafficking and penalise traffickers, pimps, and middlemen. However, the crime rate remains high while the conviction rate is low. 3. The Surrogacy (Regulation) Act, 2021: This act bans commercial surrogacy allowing only relatives to act as surrogates as long as there is no monetary payment. Experts fear that instead of preventing commercial surrogacy, it would drive the activity underground. The consequences would be borne by the surrogate, who would not be protected by law. The purpose of the paper is to objectively analyse the quality of parliamentary debates, get insights into how MPs understand the evidence and deliberate on steps to incentivise them to use empirical evidence.

Keywords : legislature, debates, empirical, India

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