Standing Orders: Making Parliament Work

Frank Feulner

Word Bank Institute
2007
I. Background

The Parliament of Bangladesh has recently requested technical assistance in the revision of its standing orders. This is particularly relevant, as around the world, many parliaments constantly face the challenge of reforming their procedures, and various parliamentary support programs provide assistance to strengthen institutional processes. In particular, the basic functions of parliament like representation, legislation, and oversight receive attention. The institutional regulations or “rules of the game” of how to conduct legislative work and internal operations receive much less attention. Yet, standing orders that govern in detail the parliamentary proceedings are as crucial as institutional structures and core functions.

In recent years, the behavioural approach to the study of legislatures has resulted in the focus on the individual actors, like legislators, constituents, lobbyists, bureaucrats, and far less on the structural and organisational issues. While political scientists have tended to minimise the importance of organisational structures and procedures, organisational analysts have concentrated their focus on bureaucratic organisations. The result is that there are only scattered articles and papers available about the organisational aspects of legislatures.

The purpose of this paper is to discuss the power of standing orders or rules of procedures within legislatures and how well-developed standing orders do enhance parliaments’ capacity to effectively fulfill their responsibilities. The point this paper makes is fairly straightforward. Ideally, contributing to the effectiveness and efficiency of legislatures, standing orders have to be living documents that are amended and adjusted by the actors within legislatures if the need arises. Standing orders have to mature together with the civic behaviour and practices of legislators and the political culture of a democratic parliament.

Standing order improvement not only takes place in newly democratising parliaments, but also in long-established and well-functioning legislatures. Strong legislatures are seen as the key of continued democratisation. There is growing recognition that greater attention to the development of sound standing orders stabilises parliamentary proceedings, increases the effectiveness and efficiency of legislators’ work, and improves the quality of legislative output and the communication with citizens.

It is believed that the Bangladeshi Parliament faces similar core challenges in developing their standing orders as parliaments worldwide. This paper identifies best practices for some of the key issues covered by standing orders. The development of generic guidelines to be applied when reforming existing or developing new standing orders will greatly benefit the internal body tasked with such a job.

---

II. Introduction

This paper on standing orders is targeted both on key challenges as well as the practical application of suggested recommendations and standards. The study uses the current Bangladeshi Standing Orders as a point of departure, but will draw upon international experience and parliamentary best practice.\(^3\) In particular, the study looks at, *inter alia*, the following issues and how they are ideally addressed by parliamentary standing orders:

- the functions of the Speaker,
- the chairmanship of sessions and meetings,
- House factions,
- parliamentary committees,
- the duties and privileges of members,
- debate and the right of free speech,
- the discussion of legislative proposals,
- voting and consensus in parliament, and
- transparency and reporting of parliamentary work.

Worldwide, parliamentary standing orders are as diverse in their coverage as the functions and activities of parliaments. A number of core areas, however, are featuring in every standing order. The issues selected for this paper are believed to be the ones most critical for the effective functioning of a legislature.

The existing studies on standing orders can be divided into two approaches.\(^4\) The first group are case studies. Each of them analyses a specific legislative procedure and its effects on individual behaviour and policy making. The second group are theoretical approaches, trying to explain why and how specific structural characteristics affect the legislature. With its generic-structural approach on standing orders, this paper takes a different, more consolidating approach. It discusses a number of particular legislative procedures that form the organisational cornerstones of any legislature, analysing the objectives of procedures and the practical implications, to come up with best practices.

The limitations of developing generic guidelines are obvious. The paper does not cover procedures specific to certain organisational characteristics (i.e. multi-party system versus a two-party system; unicameral versus multi-cameral system; presidential versus parliamentary system). However, since the principles for a large number of procedures apply in any parliamentary system, the exercise is still deemed beneficial. Particularly, legislatures in transition or parliaments in the process of revising their standing orders, can gain from the generic approach to the issue.

---

\(^3\) See, Rules of Procedure of the Parliament of the People’s Republic of Bangladesh, Parliament of Bangladesh, as modified up to 10 June 1997.

As this paper suggests, organisational characteristics and structures are important for the effective working of legislatures to pursue and achieve their means. However, they are not the only source of influence. Changing only the formal characteristics like rules may not necessarily result in the improvements in legislative performance. It is always important to consider the larger environment in which a legislature is situated and by which it is influenced, like the political culture of a state, or membership change through general elections. Equally, historical traditions and the evolution of the political system play a role, including the heavy borrowing from other political systems when legislatures are established. At last, the legislators as the main actors who make up the legislature are not only influenced by the rules, but they themselves influence the rules through their various preferences.

III. A Brief History of Legislative Rules

Most constitutions grant the members of legislatures the right to create the legislative rules that guide their work and behavior. This is the case for national legislatures as well as for state legislatures of federal states.

The origins of legislative rules are based on English parliamentary law. “Their content, therefore, is for the most part well established. Parliamentary Law is the historic compilation of English government organizational procedures. This compilation consists of the customs, both written and unwritten, that structure peaceful and just assemblies. Members of Britain’s early parliaments in the thirteenth century found that their discussions to be fruitful, needed to be orderly and respectful. In particular minority members of early parliaments discovered that, in order for their interests to be protected and their voices to be heard, a uniform system of procedural rules or parliamentary law needed to be adopted.”

Until the late sixteenth and early seventeenth centuries, the customs and rules became more consistent. The first written account of parliamentary law became the Journal of the House of Commons written by the clerk of the House in 1547. A few rules from that time are still used in legislatures today. In 1623, the Commons gave the Journal the status of an official document, making it the first written source of precedent on matters of parliamentary procedure.

Colonists brought the ideas of English parliamentary law to the New World. There, in each outpost alterations to the parliamentary law resulted in rules and procedures for the colonial legislatures. The procedures were used during meetings between colonies. After the war of independence, Thomas Jefferson, as president of the new Senate (1797-1801), recognized the need to compile similar procedural rules to assist in the day-to-day workings of the new legislature. Jefferson studied English documents on

---

6 For example, the Wisconsin Constitution grants the power to each house of the legislature to determine the rules of its own proceedings. See, Article IV, Section 8, Constitution of Wisconsin.
7 See, Legislative Rules: Part One, A Brief History of Parliamentary Law, Governing Wisconsin: From the Wisconsin Legislative Reference Bureau, Madison WI, No. 19, December 2006.
parliamentary law, among others, the *Precedents of Proceedings in the House of Commons*, published in 1781 by John Hatsel, a clerk of the House of Commons. Until today, this source is considered the best authority on eighteenth century parliamentary procedure.

Jefferson determined that effective government of a legislature required certain basic elements, including a presiding officer, a recording officer, and some established rules and customs. In 1801, Jefferson established the legislative rules for the senate. The *Manual of Parliamentary Practice*, commonly known as *Jefferson’s Manual*, became the definitive source of parliamentary law in the United States.\(^8\) Two subjects stand out from this early manual: first, the intention to make the legislature a fair forum; and second, the preliminary status of the document. Jefferson hoped that future legislators would successively improve and expand the rules, so that they may be always accurate, fair, and timely. In the following decades a large number of authors published rules of order but although created more than 200 years ago, *Jefferson’s Manual* continues to be a resource for the practice and procedure of today’s legislatures in the United States.\(^9\)

Both, English parliamentary law and *Jefferson’s Manual* also influenced a great number of legislatures in other parts of the world. Commonwealth countries that adopted Westminster-style parliamentary systems often use English parliamentary law as a guideline for the development of their parliamentary rules and procedures. Equally, states with presidential systems modeled after the United States, use practices of the congressional standing orders to create and interpret their own legislative rules. Standard publications that expand on English parliamentary law and *Jefferson’s Manual* include Luther Cushing’s *Manual of Parliamentary Practice*, General Henry M. Robert’s *Roberts Rules*, published to assist non-governmental assemblies with order, behavior and fairness, and Paul Mason’s *Mason’s Manual of Legislative Procedure*, often used by legislatures.\(^10\)

**IV. Standing Orders as Living Documents**

As with any large organization, legislatures depend on rules to organize their work. While formal features like the size and number of members, the units and subunits and arrangements of units create the boundaries, standing orders set the ways in which things are done within the legislature. They specify how the various goals are to be pursued and achieved, and what specific behaviors of individuals and groups are acceptable to the legislature.\(^11\)

---

\(^8\) The text of Jefferson’s *Manual of Parliamentary Practice* can be found at [www.gpoaccess.gov/hrm/browse_108.html](http://www.gpoaccess.gov/hrm/browse_108.html)


Legislators decide on these legislative rules themselves with few rules and procedures being neutral. That is, they define the conditions under which the game will be played, sometimes giving advantage to some and disadvantages to others. If legislators are in conflict over certain legislation, the rules and procedures provide certain processes, sometimes alternative processes, under which proponents and opponents may proceed. Since some rules favor one or the other side, strategies and tactics have to be built around the rules which will be most favorable to one side or the other.¹²

The rules run continuously from one legislative period to the next and usually this continuity is regulated within the rules.¹³ At the beginning of a new period, the rules of the legislature in effect at the conclusion of the preceding period remain in effect until superseded by rules adopted in the new period. Most of the rules remain constant for from parliamentary period to parliamentary period. For example, rules for the duties of a presiding officer remain the same and do not need to be debated each session.

Although a legislature must closely follow the established rules, it can alter or suspend a certain rule when the body has reached general agreement on an issue to speed up the proceedings. The legislature can always amend or rescind the rules to better fit the situation. The introduction of a new rule or the amendment of an existing rule follows the same procedures for introducing and voting on a new law. Rule changes that are based on House resolutions do not require the approval of the executive and have no legal effect. The rules express the resolve or will of the house and violations must be dealt with by internal mechanisms, such as the work of ethics councils. The sanctions for breaching rules are outlined in the rules themselves.

V. The Speaker and Legislative Officers

Each parliament has long-established rules regarding the election and duties of legislative officers. In the United States the presiding officers of the Senate are called the President and the President pro tempore. The presiding officers of the assembly are called the Speaker and Speaker pro tempore. In most legislatures worldwide the presiding officer is known as Speaker of the House. Other important legislative officers include the Chief Clerk and the Sergeant of Arms. The Chief Clerk or sometimes Secretary General is responsible for overseeing the administrative affairs of the Senate or Assembly. One main task is the announcing of the daily agenda, when the plenum gathers and when the committees are in session. In addition to the above mentioned officers of parliament, the concept of independent constitutional officers with an institutional relationship with parliament is found in a number of

¹³ For example, the continuity of the rules is regulated in S.O. 3 of the Australian House of Representatives; also, Article 92 of the Assembly Rules and Article 92 of the Senate Rules of the State of Wisconsin.
Commonwealth parliaments. They can include the Comptroller and Auditor General, the Ombudsman, and others. 14

1. The Functions of the Speaker

**Summarised objective**

The main objective of rules regarding the Speaker is to regulate the selection process and the powers of the Speaker.

**Practical implementation**

The House leader or Speaker commonly represents the majority party in parliament. Deputy Speakers represent minority parties. The duties of the House Speaker commonly are threefold. First, the Speaker acts as the spokesperson of the House and coordinates the government’s legislative programme before and during sessions. Second, the Speaker presides over the plenary sessions and enforces the observance of all rules for the preservation of order. Third, the Speaker has extensive responsibilities relating to the administration and management of the House. 15

The House leader arranges the parliamentary schedule and coordinates with the government over the legislative timetable and ministerial hearings. During the plenary, the House leader should act free of political party interest, commanding respect and upholding the principles of parliamentary ethics. A Speaker never participates in debate. Standing orders stress the qualities of the House leader, who should be a unifying character and a manager of divisions. His or her duty includes the watching over the correct implementation of ceremonies, like appointments, passing of bills, plenary sessions. Standing orders make the House leader the highest decision maker on procedural issues. 16 He or she must be prepared to deal with points of order, questions of privilege and other procedural matters as they arise. 17 Any queries regarding procedures and suggestions for reform of rules have to be initially addressed to the House leader.

**Key challenges and good practice**

Since the position of leader of the House comes with great power and influence on relationships, standing orders have to carefully balance the authority and the degree of control held by the Speaker. The orders must carefully set the framework for the establishment of relationships, while the behaviour of members will fill these

15 See, *Précis of Procedure*, House of Commons, Canada, Table Research Branch, last revised, November 2003.
16 See, for example, Rule 378: “The Speaker shall preserve order and shall have all powers necessary for the purposes of enforcing his decisions”, Rules of Procedure and Conduct of Business in the Indian Lok Sabha.
frameworks with live, deciding if the actions of the leaders are satisfying party interests and being acceptable for majority and minority parties alike.

The election of the Speaker can be a complex affair and should be well regulated.\(^{18}\) To avoid political bartering, to choose their Speakers many legislatures have adopted a secret ballot at the beginning of the legislative period. The election process is the first order of business at the opening of the first session of a parliament and the position is effective for the duration of the parliament.

Ensuring the completion of parliamentary business agreed with the government is a challenge. Monitoring the drafting and progress of bills, scheduling debates and votes, and negotiating with the various party factions, requires the majority of the House leader’s time. Legislatures in their standing orders have come up with a good solution to deal with the issue in a sensitive way. To simplify the task of the Speaker, the rules provide a fixed timetable for supply business like routine debates.

In his task to administer the House, the Speaker is supported by a parliamentary service. The administration of a Parliament can be very extensive and is ideally divided into an administrative branch and a research support branch. Standing order best practices are that the clerk or general secretary heading the parliamentary secretariat and its services should report to the House leadership, and not to the executive. To guarantee its independence, the parliamentary service should be staffed by parliamentary servants rather than civil servants that report to the executive.

**Idealised best practice**

Rules regarding the functions of the Speaker should ideally cover the following issues:

- Define the selection or election of the Speaker.
- Guarantee that the Speaker is acting free of political interest and upholds parliamentary ethics.
- *Define the leadership function:* The Speaker represents and speaks for the parliament to other organisations and to the public.
- *Define the function as presiding officer:* The Speaker presides over plenary sessions. The Speaker appoints parliamentary committees.
- *Define the administrative function:* The Speaker acts as the chief administrative officer of parliament. The Speaker exercises supervision over all its activities and servants.

---

\(^{18}\) See, for example, S.O. 1B on the election of the Speaker by secret ballot, Standing Orders of the House of Commons, House of Commons London, 29 March 2007; also, S.O. 2 on the Election of the Speaker, Standing Orders of the National Assembly, Parliament of Guyana; also, Rules 1-10 on the Opening Session and Election of Officers, Rules of the House of Councillors, The National Diet of Japan.
2. Presiding Officers

_Summarised objective_

The main objective of rules regarding presiding officers is to guarantee that while chairing sessions and meetings they act impartial and in good faith.

_Practical implementation_

The Speaker and chairs of committees upon entering office are faced with many technicalities of procedure which may be perplexing at the beginning. Their skills need to be beyond the requirements for ordinary members. An introduction to parliamentary procedures, the handling of technicalities and the responsibilities to act as a presiding officer therefore are crucial. A presiding officer should be willing to learn how to perform the duties of such position.19

During the numerous plenary sessions and committee meetings taking place in parliament, sometimes problems of procedure may arise and even skilled officers may well review these rules. The main requisites for a presiding officer are to know the constitution and rules of procedures extremely well, and to learn the correct methods of conducting a meeting. Since usually only a small percentage of members know much about parliamentary procedure, it is up to the presiding officer, together with the help if special procedural staff versed in the procedures, to educate and give adequate information about the application of rules.

The duties of the presiding officer are among the fundamentals of parliamentary procedure. These are to make sure that meetings are conducted in a manner which ensures justice to all and courtesy to all; handle one thing at a time; remember that the majority rules and the minority should be heard; and that no partiality may be shown.20 While settling dispute, it needs to be remembered that parliamentary procedure is intended to expedite rather than to handicap legislative practices. Therefore, a presiding officer should never apply technical parliamentary rules when they will not aid in conducting legislative business.21

The Speaker should preserve order, decorum, and quiet on the floor within the rules while members are engaged in debate of a bill or resolution. In Robert’s _Parliamentary Law_, the responsibilities of a presiding officer are formulated as follows:

> “The presiding officer of a deliberative assembly is responsible for seeing that the business of the assembly is transacted in proper order and expedited as much as possible; that members observe the rules and of debate; that order and decorum are always observed; and that the rules of the assembly are enforced with as little friction as possible.”22

---

20 Ibid.
Since debate is the means by which most motions are considered, the authorities of the Speaker are quite specific. The rules regulate that in the assembly, a member may speak only from the podium or his or her assigned place and when recognized by the Speaker.\(^{23}\) A member of the assembly may not address another member by name but rather the Speaker.\(^{24}\) Alternatively, the member may also address another member by the member’s ministerial office, the member’s parliamentary office, or the member’s district number or by the county or municipality in which the member resides or which the member represents. By keeping debates structured and impersonal, the rules foster a forum for a free and orderly exchange of ideas.

**Point of order**

A point of order is a question by a member regarding a rule or its interpretation. A point of order is a parliamentary device used to require an assembly to observe its own rules.\(^{25}\) Any member who observes what he or she believes to be a violation of the rules may address a point of order to the Speaker at virtually any time. A member raising a point of order should state which standing order or rule he or she feels is being breached. The Speaker will have to decide questions of order thereon in a manner consistent with the rules and previous rulings. For example, the standing orders of the House of Representatives in New Zealand state that in “all cases the Speaker will be guided by previous Speakers’ rulings and by the established practices of the House.”\(^{26}\)

On the question of rule interpretation or parliamentary procedure, the Speaker most commonly follows precedent. This practice increases the chances that a decision will be correct. Staying consistent with the logic of older rulings gives the decision more authority and makes it less likely that a ruling will be based on personalities or subjective preferences. No debate is permitted on a decision of order, nor can the decision be appealed to the House. Procedural rulings of the Speaker cannot be overturned by the courts, although in some assemblies, uninformed members have threatened to challenge decisions made. The final decision legislative procedure by the Speaker reflects the fact that the legislature is an independent branch of government.

Rules should differentiate between the decisions of a Speaker and the decisions of a chairperson. While the decisions of the Speaker cannot be commented upon, the decisions at the committee level may be appealed to the committee through a non-debatable motion and can be overturned by a majority of committee members.\(^{27}\)

---

\(^{23}\) See, for example, S.O. 65 Australian House of Representatives, 2006; also, Section 35, Rules of Procedure of the Norwegian Parliament, which states that speakers during a debate will be called upon in the same order as they have caught the President’s eye.

\(^{24}\) See, for example, Rule 61 on Reference to member by name, Rules of the National Assembly of South Africa.


\(^{26}\) See, S.O. 2, Standing Orders of the House of Representatives, New Zealand, 2005; also, S.O. 86 of the Australian House of Representatives, 2006; also, Rule 70, Rules of the National Assembly of South Africa.

\(^{27}\) For the Canadian case see, *Précis of Procedure*, House of Commons, Canada, Table Research Branch, last revised, November 2003.
Key challenges and good practice

During debate in the plenary, a member must confine himself or herself to the question under discussion and may not question the motives of another member. During a heated debate, legislators can sometimes forget about rules and for example deviate from a topic. In this case, the rules should provide the Speaker with a couple of tools that can be used to warn or “name” a legislator. In fact, warnings are a common feature of many parliamentary rules. Upon a certain number of warnings by the presiding officer, members may be “named”. The Speaker then has two options: he may immediately ask the member to leave the chamber, or asking the House to take a disciplinary action. If the House proposes a motion, the offending member may not be allowed to attend further plenary sessions and meetings, sometimes until the end of the parliamentary sitting. Rules can empower the presiding officer to call upon members who digress to keep to the subject under debate or call to order members who commit a breach of order.

The Speaker or the chairperson of a committee can further use rules to maintain order and take action against disorderly conduct by a member, like if one member calls another member a name or uses offensive words. The respective member can be called out of order. Some standing orders are very specific in defining the language used for debate. Personal attacks, such as name calling, are irrelevant to the debate or deliberation, interfere with rational decision making, and cause unnecessary disruption. A number of sanctions are usually spelled out in the rules.

Idealised best practice

Rules regarding presiding officers should cover the following issues:

- Detail the authorities of the presiding officer.
- Guarantee that the presiding officer exercises wide discretion during meetings.
- Provide the presiding officer with great latitude in assisting members in exercising their rights and privileges, without being partisan.
- Allow the presiding officer to relax procedures from the strictest level to speed up debate, but urge a return to stricter formality if difficulties arise.
- Encourage having an induction training on rules for presiding officers.
- Provide for procedural officers available at committees and plenary sessions for assisting the presiding officer.

---


29 According to Rule 36 of the Rules of Procedure of the German Bundestag, 2003, a call to order and the reason for it may not be referred by subsequent speaking members. If during his speech a member is called upon three times to keep to the subject under debate or is called to order three times, the chairperson must direct him to discontinue speaking and may not grant him to speak again during the same meeting (Rule 37).
VI. House Factions

Summarised objective

The purpose of party factions within parliaments is to divide the House into groups to better articulate their policy ideas. This includes regulating the creation of factions and the balancing of parliamentary minorities and majorities.

Practical implementation

Around the world, parliaments and their standing orders give parties various degrees of significance, very much depending on the number of parties being represented in parliament. Hence, the requirements posed on political parties by standing orders and the privileges accorded to political party factions or caucuses differ from place to place.30 One common objective of party factions is to make the distinction clearer between the majority party, or a coalition of parties, that support the government (executive) and the other parties opposing it. Standing orders help to institutionalise this distinction, which is considered valuable as a check on the possible abuse of power, as a channel for minority opinions, and as a means to ensure peaceful changes in parliamentary majorities.31

A number of propositions can be made regarding party factions.32 Over the past decades, the influence of factions in parliament has grown significantly, giving them more capabilities and more opportunities. Equally, factions have become important forums for party members representing distinct regional viewpoints on political issues and allowing for more regional input to internal party discussion. Further, factions also help parties to mediate between party internal differences and diverting ideological thinking. Finally, too strong majority party factions that impose a strict party line can result in a weakening independence of parliament from the executive.

Many parliaments have rules in place that oblige members, once elected, to join the parliamentary faction of their party and remain with it as long as they hold their seat. This practice gives the party faction a high degree of stability. Although in some parliamentary systems the members are not legally bound to a party group because the mandate is personal, members often can only through a party secure a seat in parliament and exercise their mandate effectively.33 In the German Bundestag, a party group (faction) must be an association of members of parliament that belong to the same political party.34

30 Factions in the context of this paper are understood as party caucuses rather than intra party units. For a discussion of the research of the later see, Frank P. Belloni and Dennis C. Beller, “The Study of Party Factions as Competitive Political Organizations”, The Western Political Quarterly, Vol. 29, No. 4, (Dec. 1976), pp. 531-549.
32 Professor Paul Thomas (University of Manitoba) presented four propositions about party caucuses in his keynote address to the Conference Party Caucuses: behind closed doors, organized by the Canadian Study of Parliament Group, Ottawa, 21-22 November 1997.
34 See, for example, Rule 10, Rules of Procedure of the German Bundestag, 2003.
Some standing orders reward party factions financially with monthly contributions and the provision of office space in parliament. In the Rumanian Chamber of Deputies, parliamentary groups, depending on their share in the chamber, shall have at their disposal the necessary logistics for the carrying out of their activity, cars, secretariat, and special personnel, according to the decision of the Standing Bureau. In some legislatures the recognition of factions over the individual members is further reflected in the way the agenda of the House is prepared and the amount of speaking time awarded. In several cases, while the speaking time of members is equal, the number of speakers of a faction reflects the strength of each faction during the plenary.

It is important that factions are free to organise their internal affairs. They do this with their own more or less strict internal standing orders. A common practice is to elect a chairperson and a number of vice chairs, an executive committee, and one or a number of floor leaders. Particularly in large well developed factions, working groups or issue groups are formed, which include the party members of the parliamentary committees with the same focus. The main duty of the leader in the governing party is to manage the flow of the government business and to do this to seek the cooperation of the leaders of the other parties in parliament.

During regular meetings, the caucus leaders discuss, negotiate and arrange legislative business and outline the parliamentary schedule. The meetings are also used to agree on progress made regarding policy issues. The consultation process among caucus leaders can be more or less formally regulated in the parliamentary standing orders. Some standing orders constitute an all-party business committee (Canada), a council of elders (Germany), a Standing Bureau (Romania), or a deliberation council (Indonesia) for the purpose of planning the business of the House and provide caucus leaders with a forum to achieve consensus.

The power executed by the faction leadership can be quite strong, calling weekly meetings and setting the agenda of the regular meetings. It also proposes the faction’s positions on policies and issues it will take in parliament, which then have to be followed by all its members. It also develops parliamentary strategies and tactics and decides on assignments to committees in parliament. In particular, it appoints faction leaders for the committee work, to discuss issues in the committee with other committee members of his faction, and to report back to the faction leadership. It can be concluded, that in most parliaments, the faction leaders have the largest impact on the performance of the legislature. But how does the caucus leadership makes its decisions? Ideally, the decisions of the party faction leadership are made by majority vote, but not all party internal standing orders regulate the decision making process in this way. Further, each party usually has its own wording regarding party discipline.

35 See, Article 16, Standing Orders of the Romanian Chamber of Deputies, as of 2003.
Challenges and good practice

One of the key challenges for setting up a parliamentary group is the determination of the optimal minimum size of a faction. Ideally, the size of a political faction is determined by the overall number of legislators in a parliament and based on a certain percentage thereof. Another issue is the need for having clear criteria in the rules for the formation of parliamentary groups, including their rights and responsibilities in the legislature. This issue is perceived as an agreed Commonwealth and international norm for all democratic legislatures. Finally, an issue of contestation that can occur in the absence of specified rules is the formation of committees through party factions. Standing orders, therefore, should regulate in detail the appointment of parliamentary committees by the parliamentary groups.

With regard to all-party business committees, the media tends to overemphasize the individual personalities of caucus leaders and their influence in brokering compromises. However, the success of House leaders in achieving a consensus depends very much on the political context at a given time. They are very much dependent on the opinion in their respective caucus where divisions can be very common. In such case, no immediate consensus might be achieved, and leaders have no other choice than to refer issues back to the party caucus for further internal discussion. To facilitate more successful negotiations and to be able to make commitments, the leaders require some freedom from their respective caucuses. But this is prevented by the party internal standing orders which impose strict the party discipline.

Idealised best practice

The rules regarding House factions should cover the following issues:

- Spell out the criteria for the formation of party factions in a precise way.
- Define the rights and responsibilities of party factions in the House.
- Guarantee the freedom of factions in organising their internal affairs.
- Clearly define the funding criteria of factions and other support provided by the House.
- Define what support services factions can have, how staff is to be recruited, and to whom the staff of factions reports.
- Provide factions with the opportunity for consultation among factions through all-party business committees.

39 Section 13, Standing Orders of the Romanian Chamber of Deputies state that parliamentary groups may be set up of minimum 10 deputies who ran in the elections on the list of the same party or of the same political formation.
VII. Parliamentary Committees

Summarised objective

The main objective of rules regarding parliamentary committees are twofold: to create policy expertise, and to guarantee the scrutiny of government policies and the study of proposed legislation.

Practical implementation

Parliaments delegate most of the detailed study of proposed legislation and the scrutiny of government policy and programmes to their committees. The United States Congress has created committees and later subcommittees for the thorough consideration of legislation, each with the right to proceed with virtual autonomy at its own pace. In delegating these responsibilities, parliaments establish powers and specific terms of reference for committee work through the standing orders. The current powerful committee system in Congress is the result of amending the initial rules focusing on the objective of unlimited debate towards scrutiny and investigation.

Legislatures around the world recognise the significant value committees can provide in informing their members and receiving information from outside the legislature. Committees are given the right to call for witnesses and issue reports. The rules on the examination of witnesses should be clear and comprehensive. Although the committee systems in other parliaments are less powerful than the one in the United States Congress, they equally support the division of the large plenary into groupings with the focus on specific issues and the necessary expertise to deliberate the issues.

A highly developed committee system to create policy expertise has become an important asset for legislatures to play a significant role in policy making. The standing committees deal with the areas of continuing concern to the legislature, like the scrutiny of bills, regulations, and estimates. For the most part, they parallel the government departments whose policy development, program administration and budget estimates they examine. The names and subject areas of committees do not necessarily need to be defined as permanent, although certain core areas will inevitably be covered by standing committees in any parliament. For example, the

---

42 See, Précis of Procedure, House of Commons, Canada, Table Research Branch, last revised, November 2003.
43 See, for example, Rule 273 on the Examination of witnesses, Rules of Procedure and Conduct of Business in the Indian Lok Sabha.
46 In recent studies on parliamentary reform, members recommended that it may be worthwhile to end the practice of structuring committees to mirror the structure of department, and to allow for cross-cutting, and issue-based committees. See, “The Parliament We Want: Parliamentarians’ Views on Parliamentary Reform”, report prepared by the Library of Parliament, Ottawa, December 2003.
Norwegian Parliament identifies the following permanent standing committees in its rules, with the option to decide at any time to increase or reduce the number of standing committees and the number of members on those committees:47

1. The Standing Committee on Energy and the Environment
2. The Standing Committee on Family, Cultural Affairs and Government Administration
3. The Standing Committee on Finance and Economic Affairs
4. The Standing Committee on Defence
5. The Standing Committee on Justice
6. The Standing Committee on Education, Research and Church Affairs
7. The Standing Committee on Local Government
8. The Standing Committee on Scrutiny and Constitutional Affairs
9. The Standing Committee on Business and Industry
10. The Standing Committee on Transport and Communications
11. The Standing Committee on Health and Social Affairs
12. The Standing Committee on Foreign Affairs

There are various types of committees. In some legislatures, the standing orders allow for the ad hoc formation of special legislative committees to deliberate bills, but in most other legislatures the standing committees, besides their scrutiny function, also have the authority to examine bills. Standing committees can also create subcommittees and delegate some of their responsibilities to them. These subcommittees can not report directly to the House but have to report through the respective standing committees.48 Alternatively, special (joint) committees can be appointed to study specific matters or deliberate bills that cover more than one standing committee. In bicameral parliaments, the standing orders can also allow for joint committees that are composed of members of both Houses.

The rules for committees are intended to guarantee an effective, efficient, and inclusive deliberation of issues and bills that lead to sound legislation. They specify the ways committees conduct their work, including the examination of issues referred to them by the House, the reporting on their work to the House, and the invitation of witnesses and research on technical matters. The proceedings of committees are governed by the same rules which govern the House proceedings. Only a few rules usually do not apply, like the limiting of speaking times and the length of speeches by members. Committees are free to decide their own rules as long as they do not exceed the powers delegated to them.

To conduct their work effectively, all committees are eligible for sufficient expert, professional, technical and clerical staff. However, in some legislatures, insufficient allocation of resources for committee support restricts the effectiveness of committee work. Members of committees must specialise in order to acquire the expertise necessary for decision making, to build the capacity required for dealing with issues, and to develop the ability to wield influence and power.49 The committee system

48 See, for example, Rule 141 General Rules on Subcommittees, Rules of the National Assembly of South Africa.
49 See, among others, Joseph Cooper and G. Calvin Mackenzie, eds., The House at Work, University of Texas Press, 1981.
ensures that the legislature develops experts among its membership in distinct public policy areas, and these experts will chair or serve on committees to which bills are referred. Policy expertise can therefore be parcelled out among the members of a legislature.

The representation of both majority and minority party factions on each committee is a crucial aspect to be considered when setting up committees. Ideal rules require that each faction is represented on each committee in direct proportion to its size. The Commonwealth Parliamentary Association’s *Benchmarks for Democratic Legislatures* therefore recommend that “The legislature’s assignment of committee members on each committee shall include both majority and minority party members and reflect the political composition of the legislature”.

The principle of reflecting the balance in the House also applies for the number of committee chairmanships awarded to each faction. Orders, should rule, however, that the chairs are elected in a transparent way by the committees. If more than one candidate is nominated for the office of a chair, then the orders can rule that the election be conducted by secret ballot presided over by the clerk of the committee. The orders can also state that the chairs of specific committees, like for example public account committees, must be a member of the official opposition. The task of the chairs include to serve as presiding officers and as the spokespersons through which all matters concerning the work of the committees are channelled.

**Key challenges and good practice**

It can be a challenge to develop standing orders that guarantee just representation of every faction within each commission. Because of the small number of representatives of some parties, the representation must be guaranteed through faction membership instead of simply party membership. But even when each faction names its proportionate share of the committee membership, the need for expertise in committee work and the need to represent all sections of each party on every committee and representatives of special interests on the relevant committees, seriously restrict the party’s choice. In many cases the experts are at the same time the representatives of the special interests and they virtually appoint themselves. Often there are more committee places than members and therefore places eligible for factions.

Standing orders should also anticipate the possible substitutions or alternates of committee members during meetings. The substitution can not simply be left at the discretion of the factions. Rather a list of substitutes should be filed with the clerk of the committee. Obviously, the substitutes have to be of the same party. Substitutions then can be made by a permanent member of a committee for any specific meeting by sending the name of a member included on the list. A time period can be set before

---

50 For example, Rule 12, Rules of Procedure of the German Bundestag, 2003; Section 11, Rules of Procedure of the Norwegian Parliament, as of 1997.
53 See, for example, Rule 127 on Alternates, Rules of the National Assembly of South Africa.
the request can become effective. Permanent changes in committee membership should be possible only after consideration by a committee on procedures and House affairs or the all-party business committee.

A frequent challenge in parliaments with unclear standing orders on the issue is the appointment of the committee chairs. The reason for potential conflict among contesting parties is the power that committee chairpersons wield in affecting the deliberations of bills and on policy outcomes. Because of this significance, the naming of chairmanships equivalent to the proportion of seats a faction holds in parliament often becomes a matter of political bargaining. This bargaining can become quite fierce if parties regard the chairmanships of certain committees as their preserve. A solution to this challenge adopted in some parliaments is the reduction of powers for committee chairs, and the adoption of the principle that when a chair is given to a member of the opposition party, that the deputy chairmanship is then given to member of the governing party and vice versa.

_Idealised best practice_

Rules regarding parliamentary committees should guarantee the following:

- Define the minimum requirements for the formation of a committee without restricting their numbers. A parliament can provide for as many committees as it finds useful.
- Allow for flexibility in the establishment of committees, but no committee should be established unless it is really needed.
- The name, method of selecting members, selecting the chair, and usual duties of each committee should be specified.
- The composition of a committee must reflect the balance of majority and minority factions in the House.
- A committee must allow for more time being available for discussion for each subject than in the plenary.
- A committee should have more informal procedures than the plenary.
- Define the authority of committees to call for witnesses and reports.
- The committee system should be regulated in a way to guarantee the generation of expertise.
- Define the kind of support services a committee can rely on.
- Define the right of committees to hire expertise from outside the parliament.

On the powers of committee chairs see the study on congressional action on federal aid to schools by Robert, Bendiner, _Obstacle Course on Capitol Hill_, New York, 1964.

• In the committee, the house member should be able to enjoy some autonomy and the ability to play out his expertise and knowledge of a policy issue.

• Rules on committees should define the practice of member substitutions during meetings.

VII. Members of Parliament

Summarised objective

The main objective of rules on members is to define their duties and privileges.

Practical implementation

The classic liberal conception of the legislator as a “representative of the whole people, not bound by orders and instruction, and subject only to his conscience” is often expressed in the constitutions of countries with democratic political systems. A member of parliament is regarded as an autonomous individual rather than the agent of a political party. His rights and privileges, qualifications, obligations, and often also his compensation, are regulated in the constitution and subsequent laws. Contestations and loss of membership are regulated in the relevant election laws. While the rights and duties as well as the behaviour of members within parliament are regulated in the standing orders and ethics code for members.

By joining parliament after elections, a member enters into a contract with this organisation. One of the main duties of members is to participate in the activities and debates of parliament. With debate being the essence of parliaments, debating is therefore essential to a member fulfilling his or her role. The legislator is not intended to be primarily one who gets things done, but one who uses debate to assess, criticise, amend, resist as well as to promote, advocate, motivate and advance ideas. Throughout their tenure, legislators spend most of their time in committee and party group meetings, and to a lesser extend in general plenary sessions.

To fulfill there responsibilities, members need adequate and appropriate support. Rules should ensure that any support to members is equal and does not favour the parliamentary majority. This is particularly important for allowances which need to be well regulated. Some standing orders grant per diem allowances for attendance of meetings. Besides often leading to the proliferation of meetings, this practice is perceived of being against the basic understanding of the main task of legislators, who

56 See, for example, Art. 38, Basic Law (Grundgesetz) of the Federal Republic of Germany.
60 See also, Benchmarks for Democratic Legislatures, a study group report, Commonwealth Parliamentary Association, 2006. p. 14
are elected and compensated for precisely this purpose. Many standing orders, therefore, have long since replaced the rewarding of *per diem* allowances with financial penalties for unexcused absence from sessions or the absence from roll-call votes.

Besides making the obligation to participate in the work of parliament, standing orders ought to create a framework under which the members can learn from the others as well as contributing to them. “A member is not there to do things on his or her own as much as to help parliament do them.” 61 The rules help to organise the tasks of legislators in order to enhance their effectiveness and collegiality. Ideally, they should assist each member how best to participate in parliament. The work of a member is corporate in nature. By definition a legislator or “member” is part of something greater then himself and he can function only when he works as an integrated part.

*Challenges and good practice*

An obstacle for parliamentarians’ effective performance, particularly in democratising parliaments or legislatures undergoing a reform process, is the lack of understanding of Standing Orders. Knowledge about the legislative law and parliamentary proceedings increases the effectiveness of day-to-day work as well as the quality and output of legislation. Hence, there is need for increasing the awareness among members about the rules and procedures of parliament beyond initial orientations. 62 Particularly the fact that rules are made by members for members and not by the government or political parties is important.

Another challenge for members is that they are often dominated by their party allegiance, which is either regulated in the general standing orders of parliament, or in the special standing orders of the specific parties. In many parliaments, the influence of parties is pervasive. Beyond being the vehicle for the recruitment and election of members to parliament, the standing orders often regulate the aggregation and expression of policy ideas through party factions, rather then individual members. 63 Especially cabinet-parliamentary systems have the tendency to elevate political parties over individual members.

Further, as the conventional functions of legislatures grow and become more complicated, their members face multiple responsibilities and institutional challenges, including full schedules, the amount of constituency work and public communication, and limited resources available to legislative work in committees. 64 Rules can help to omit overlapping commitments by drawing up a schedule balancing the work in the factions, commissions, the time for plenary sessions and special meetings with the

64 For example, parliamentarians in the African and Asian context are faced with a growth and significant transformation of their functions. See, for example, Ruth Oniang’o, “Strengthening parliament as an Institution: some recommended practices”, Lessons Note, The African Capacity Building Foundation, Nairobi, July 2004.
time for constituent visits and public communication. For example, the Australian House of Representatives sits in a four-weekly cycle of two sitting weeks followed by two non-sitting weeks with the normal sitting hours as follows:65

<table>
<thead>
<tr>
<th>Day</th>
<th>Time of meeting (S.O. 29)</th>
<th>Usual time of adjournment (S.O. 31)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monday</td>
<td>12.30 p.m.</td>
<td>9.30 p.m.</td>
</tr>
<tr>
<td>Tuesday</td>
<td>2.00 p.m.</td>
<td>9.30 p.m.</td>
</tr>
<tr>
<td>Wednesday</td>
<td>9.30 a.m.</td>
<td>8.00 p.m.</td>
</tr>
<tr>
<td>Thursday</td>
<td>9.30 a.m.</td>
<td>5.00 p.m.</td>
</tr>
</tbody>
</table>

If members agree the rules can help to make the members less dependent from the government and party leaders. For example the selection of the Speaker as an officer independent from the government party can be elected by secret ballots cast by the members meeting in an all-party caucus chaired by the Clerk.66 This election should be ratified by an open vote in the chamber then followed by the traditional swearing in. Equally, the chairpersons of the party factions in parliament and committees should be chosen by their respective faction or committee members. This can be regulated in the standing orders of the various parties. Like the case for the Speaker election, this practice will indicate that the members have a live of their own.

Finally, a relaxation of rules on party discipline can give members more freedom to vote on their own on all occasions where the government’s confidence is not at stake that requires tight party lines. In a number of recent reports on members’ views regarding parliamentary reform, most members are in favour of an increase in the use of free votes.67 Subsequently, some research results suggest that reformed rules can encourage more free votes on matters where conscientious scruples and regional interests are involved, thereby increasing representation.68

**Idealised best practice**

The rules on the members of parliament should cover the following issues:

- Clearly identify the rights and duties of legislators, like the right to attend meetings, to present motions, to speak on questions, to vote, to nominate, to be nominated for offices, to access records and documents, to insist in the enforcement of rules, the privilege of immunity, to have a fair hearing before an ethics council, to resign from office.

---

• Provide flexible attendance requirements, like call for participating in voting for decisions, rather than minimum quorums for attention.

• In order to balance otherwise overlapping commitments of members, meeting schedules for committees can be regulated.

• Guarantee that all members have a right to access the proceedings of meetings.

• Define the resources available to members to fulfill their responsibilities in the House and towards their constituents.

• Provide strict regulations on facilities for members and the use of allowances.

VIII. Parliamentary Work

One of the tasks standing orders have to achieve is the balancing between the often opposing privileges of members on the one hand and the requirements of the plenary on the other. Therefore, it must be an underlying principle of standing orders to always consider the two poles of members and the plenary.

1. Debate and the Right of Free Speech

Summarised objective

The main objective of rules regarding debate is to guarantee that the House meets regularly and that the right of free speech is consolidated with the need of parliaments to come to conclusions.

Practical implementation

Regular meetings and debates are a recognized benchmark of democratic legislatures and in almost all countries the holding of legislative sessions is constitutionally mandated.69 For example in India, there are three parliamentary session held annually: the Budget Session (February to May), the Monsoon session (July to August), and the Winter Session (November to December). During parliamentary sessions, the right of free speech receives special attention and it is also reflected in most standing orders. For example, the rules of the National Assembly in South Africa state that “there shall be freedom of speech and debate in or before this House and any committee thereof, or any joint committee of Parliament, subject only to the restrictions placed on such freedom in terms of or under the Constitution, any other law or these Rules.”70

The rules on debate help the member to stay focused on relevant issues. They provide for certain minority rights to ensure that all views will be considered before the group


70 Rule 44 on Freedom of speech and debate, Rules of the National Assembly of South Africa.
reaches a decision. However, often a large category of minority rights cannot be exercised by an individual member alone, but belong to groups of legislators. Therefore, a member by himself cannot obtain membership on a committee, or propose a bill, move interpellations, or pose questions of confidence.\(^71\)

The right of free speech and its protection through rules may result in a slowdown of legislative work. Each house of the legislature may, by motion, suspend its own rules. Generally, any rule may be suspended.\(^72\) The motion, requiring the support of two-thirds of the members present, allows for special action on a specific proposal. However, any suspension of a rule is only temporary. Rule suspension is sometimes used by the majority to expedite its legislative goals or when a measure is not controversial.

Although debate is an essential part of the legislative process, rules limiting debate are sometimes used by the majority to end discussion and move a proposal forward.\(^73\) In such a case, the majority may limit debate on a motion to “put the question to a vote”. The motion may be made on a question currently under debate or on the main question of a proposal. The motion itself is not debatable and, if carried by a majority, the proposal or question is put to a vote without further debate.

Rules also regulate the questioning hour or questioning time of parliaments. This practice provides the member with the opportunity to inform himself about government policies and administrative actions, contribute matters concerning his constituency or area of representation, as well as enriching the debate and relationship between the legislature and the executive. Questioning hours are of great importance in the British House of Commons or Westminster style parliaments, where prime ministers make themselves available to weekly questioning by house members. Rules regulate how often questioning hours take place and if questions intended to expose ministerial weaknesses or administrative shortcomings, have to be send to the government in advance. They also regulate the right to spontaneous follow-up questions in meetings and sessions.\(^74\)

**Challenges and good practice**

Questioning times that give individual members the chance to develop their profile can be severely reduced in impact when party politics exist that do not allow members to introduce questions on their own authority.\(^75\) Often the time for questioning is limited and it is possible for the government to deliver remaining answers in writing. Finally, the high level interaction between the legislature and the government can be reduced further where standing orders allow ministers to delegate secretaries of state or senior civil servants to answer questions in their behalf.

---


\(^72\) See, for example, S.O. 399-401 of the Australian House of Commons.


\(^74\) See, for example, Rule 106 on Executive statements, Rules of the National Assembly of South Africa.

There is a tendency in modern industrialised states that their parliaments are declining. Parliaments continue to lose power to the executive, the administration, and to the political parties. However, checking the concentration of power remains an important task. Therefore, standing orders should consider that strong voting discipline is only an advantage, as long as party control does not extend to the content of the debate in the plenum. Also, rules should to a certain extend preserve the opportunity for members to serve as individual representatives of their constituencies.

*Idealised best practice*

The rules regarding debate and discussion should cover the following issues:

- Guarantee regular parliamentary sessions.
- Guarantee free interchange of thought and assure that every member has the opportunity to be heard.
- Guarantee the freedom and equality of members by obliging members to respect other members.
- Allow for a degree of independence of members from their political parties.
- Maximize the time available for discussion without restricting that all views will be considered before a decision is made.
- Clearly regulate question hours and spontaneous follow-up question.
- In order to allow for discussions and debates to progress, regulate digressions and dilatory tactics.
- Specify sanctions for the misconduct of members.

2. The Discussion of Legislative Proposals

*Summarised objective*

The main objective of rules regarding the discussion of legislation is to ensure that legislative proposals like bills and resolutions receive full deliberation in a timely manner. The rules provide structure and order to legislative proceedings which is essential for fair legislative practice.

*Practical implementation*

The legislative rules ensure that the legislative process can progress in a peaceful and respectful manner. They assist a diverse group of legislators to accomplish a common goal. Most legislatures regulate the daily, weekly and monthly activities at the
parliament in great detail. Further, rules may regulate debates within parliaments well in advance. Often, time is allocated for the various parties in proportion to their strength and they in turn distribute it among their members in accordance with their own party strategies.

Different parliamentary cultures make for different rules that result in different order for members being allowed to speak, and for the number of individual members being given the opportunity to participate in debate. Many legislatures regulate speaking time very strictly to keep meetings as efficient as possible. Therefore, provisions in the rules may include the type of meeting, the time limitation of debates, special regulations on debates, the members who have a right to speak, and the duration of discussions.

The rules outline the procedures for introducing, addressing, and voting on a proposal for a new rule or law or changes to an existing rule or law (amendment). Proposals include bills and resolutions. In many legislatures, if proper procedures have been followed, any member may introduce proposals to any general plenum (private proposal). Sometimes, however, the procedures require a minimum number of members or a political faction supporting a proposal before the proposal is put on the agenda of the floor session.

The rules can outline the number of separate readings for a proposal. In the United States Congress – as in many other legislatures around the world - usually there are three hearings. The rules do not ensure that members will be well informed, but by requiring three readings for each proposal, the rules ensure that members will have the opportunity to be informed. The members of the legislature will have ample time to research, modify if necessary, and debate a proposal before they make a decision.

After the first reading, proposals are generally referred to committees (in some legislatures this happens only after the second reading). The rules give the time frame for how long a committee can debate a proposal. If the committee reports the proposal out, it goes back to the floor for a second reading. Upon second reading, a proposal is debated and may be amended. After the third or final reading of a proposal and after debate ended, the proposal is put to a vote. Voting may be by voice or roll call. Legislative rules specify that most questions are decided by a majority of a quorum.

Challenges and good practice

A key challenge in regulating the discussion of new legislation is the shortage of time and the need for efficiency in reaching conclusions. Time can be compromised by unprepared members and repetitions of what has been said already. Some parliaments

---

76 See, for example, Rule 30 of the Rules of the Canadian House of Commons which determines the weekly activities of the House. Also, Chapter 6 on daily proceedings of the House in Précis of Procedure, House of Commons, Canada, Table Research Branch, last revised, November 2003.
77 See, for example, Section 29, Rules of Procedure of the Norwegian Parliament, as of 1997.
78 See, for example, Rule 76, Rules of Procedure of the German Parliament which requires that items of business, like bills, submitted by members shall be signed by a parliamentary group or five percent of the members of the Bundestag.
79 See, for example, Rules of the Assembly of Wisconsin.
have passed rules that provide a catalogue of speaking times in various meetings and a further catalogue of language not to be used during meetings. Much of the discipline, nevertheless, depends on the execution by the Speaker and committee chairs who must be competent in directing discussions. They are the time keepers of discussion on issues, both in plenary sessions and committees.

**Idealised best practice**

Rules regulating the discussion of legislative proposals should include the following issues:

- Regulate minimum time for announcing meetings to allow for preparations.
- Regulate the schedule for the various readings for a proposal.
- Regulate in detail how question and answering sessions should be conducted.
- Specify that participants from outside who attend meetings must deliver talking points in advance.
- To avoid overlapping commitments of members, provide a schedule of daily, weekly, and monthly legislative activities.
- Assure that the legislation process can be conducted in a respectful manner.
- Specify sanctions in the event of misconduct of members

3. Voting and Consensus in Parliament

**Summarised objective**

The main objective of rules regarding voting is to come to a mutually accepted conclusion of debate on an issue.

**Practical implementation**

How to come to conclusions in a legislature is of great importance. Most rules specify that to come to a satisfying conclusion after all voices have been heard nearly all questions are decided by a majority of a quorum. Already in 1876, Robert ranked the motions from highest to lowest as follows: adjourn, raise a question of privilege, lay on the table, previous question, postpone definitively, commit to committee, amend, postpone indefinitely, and finally, main motion.81 The motion and amendment process seems like an intricate affair but it is quite striking. Basically, the main motion (one at a time) can be amended in various ways, but these amendments are always voted one at a time until the main motion is finally ready for consideration. An alternative

decision making modus is succession voting, under which the first alternative is approved or rejected, followed by the second, and so forth. 82

Votes in a House are conducted through the speaker and in committees through the chairperson. The different methods of voting, which are recognised in deliberative bodies are: Unanimous consent, voice (aye! and no!), standing, ballot, and roll call. 83 Further, parliamentary procedure has different voting types: majority vote, two-thirds vote, and the majority of the entire membership (unanimous vote). Requiring more than a majority vote follows the principle that the higher the vote required, the smaller the minority to which control passes.

In many legislatures, voting on a variety of issues can occur at any time and all factions need to be in a constant state of readiness. This situation provides an incentive for factions to ensure that their members are present at meetings and sessions in order to win votes, cause others to lose votes, or simply to defend their views on policy issues. Any member has the right to abstain from voting on an issue.

Key challenges and good practice

The situation that voting can occur at many junctures of the legislative process adds pressure on members to be available in the House to participate in a given vote. Because members usually are extremely busy with their tasks, they sometimes might not be able to attend regular committee meetings or plenary sessions. The rules therefore must have provisions that enable members to be excuses for valid reasons, like when they attend public meetings elsewhere, tending to matters in their constituency, travelling on official business, or being ill. 84

Standing orders might recommend the publishing of detailed records of attendance for committee and plenary sessions, including the voting records. This allows the public to see which factions are committed to the legislative process and which factions are less interested in attending sessions. For example, at the Australian House of Representatives the attendance of members is recorded at each sitting of the House in the Votes and Proceedings where the names of members not present are listed. 85 The practice of recording attendance during question time and voting allows the public to judge the effectiveness of elected representatives since the records show if members were present in meetings and that they took a public stand for or against a particular issue. 86

Idealised best practice

The rules regulating voting and consensus building in parliament should include the following issues:

- The defining of the vote is important.
- Guarantee voting as a fundamental right.
- Guarantee that a member has the right to abstain from voting.
- Define that all votes are be binding.
- Make it the duty of the presiding officer to announce the result of a vote.
- Voting records should be produced and made available.

4. Transparency and Reporting of Parliamentary Work

**Summarised objective**

The main objective of rules on transparency is the obligation of maximum disclosure, mandating the recording, archiving, and making available in-house and to the public the records of parliamentary work.

**Practical implementation**

Rules regulate another characteristic of decision making within legislatures, which is the degree to which they are open to public view. Since legislatures are public in nature, they can not be closed in their operations. Plenary sessions and committee meetings, therefore, are usually open to the public and the media. In South Africa, the constitution says that a parliamentary committee meeting may not be closed to the public “unless it is reasonable and justifiable to do so in an open and democratic society”, and the rules of the National Assembly confirms that proceedings are conducted in public at meetings of the House, in extended public committees of the House, and in appropriation committees of the House. The standing orders from parliaments around the world show, however, that great variation exists across legislatures regarding their degree of openness. This fact can be based on the perception that legislatures with rules that stress openness are thought to be more likely to experience delays in decision making, more susceptible to external influence, more difficult to lead, but also more democratic in their decision making.

One of the most important indicators of parliamentary effectiveness is how well parliament communicates what it does to the public. Rules have increased openness of legislatures through the opening of sessions of committees and subcommittees, allowing for television coverage of meetings, and encouraging the publishing of

---

87 See, Constitution of South Africa and Rule 22 on Forums for public proceedings, Rules of the National Assembly of South Africa.

committee notes and other documents in a predictable manner. In the British House of Commons, the full record of all debates is published in Hansard, a word-by-word account of plenary sessions and committee meetings. The Australian House of Representatives in 1993 passed a regulation authorising the publication of the record of debates and proceedings in the House and affirming the right of committees to authorise the publication and of documents and records and transcripts of evidence.

Publications published regularly by legislatures include the journal - a record prepared by the clerk, containing decisions and other transactions in the House -, order papers, notice papers, bills, and committee documents. Parliamentary publications are an essential part of legislatures and they are usually made available in-house to members and staff, as well as to the media and general public. Ideally, rules provide schedules for the preparation and availability of documents after sessions. Due to the advance in technology, in many parliaments, minutes of sittings are available shortly after the sessions have ended. Members are then given time to make corrections limited to words or phrases, but the gist of the speech may not be changed. For example in the National Diet of Japan, a member who spoke may ask for corrections of his remarks not later than 5 p.m. on the day after the distribution of the minutes. Further, rules can define which documents are considered secret or which ones are only for limited circulation. All other document should be easily accessible.

Key challenges and good practice

A challenge for standing orders are the rules on closed meetings, like for example the meetings of House faction leaders which are private and off the record, except for the agreements which are announced afterwards. For House leader’s meetings, privacy and frankness in negotiation are important for successful negotiations of diverging opinions. If a committee wishes to deliberate in private, it may decide in camera, or closed meetings. Giving strict criteria, standing orders can allow for such meetings when the committee likes to considers administrative matters such as the proposed budget or the hiring of committee staff. Closed meetings should allow members to discuss and negotiate in private, issues that otherwise might be difficult to agree upon. A guiding principle for standing orders therefore should still be to guarantee the transparency of debate, with restrictions on openness imposed only if administrative matters are discussed or the confidentiality of all-party discussions is an issue. The Australian House of Representatives in 2000 adopted a resolution


90 See, Resolution of 5 May 1993, in House of Representatives Standing Orders and Sessional Orders, Department of the House of Representatives, Canberra, 29 March 2006, p. 107. Also, Section 16, Rules of Procedure of the Norwegian Parliament, as of 1997 stating that “the committees are responsible for the printing, to the extend they find appropriate, of the documents and annexes which have been sent to them by the Storting or its chambers.”


authorising the publication of all evidence or documents taken *in camera* that have been in the custody of a committee for at least 30 years.\(^\text{94}\)

Some legislatures have amended their rules to allow for increased transparency of their committee work. In the Netherlands, procedural meetings of certain committees are now open to the public, allowing for insight into the agenda setting. As well, in the legislatures of South Africa, Cyprus and Cote d’Ivoire, committee meetings have been opened to the public and the media is able to report their work.\(^\text{95}\)

**Idealised best practice**

The rules on parliamentary transparency should include the following issues:

- Guarantee that maximum disclosure is a guiding principle for all processes in parliament.
- Votes in the plenary should be open to the public.
- Actively support the access to information.
- Define the parliamentary duty of producing of accurate minutes.
- Clearly define the responsibilities for the preparation, correction, and distribution of minutes.
- Include communication with the public and the media as a duty of parliament.
- Parliament has an obligation to publish its documents.
- Clearly and narrowly define exceptions to the disclosure of documents and openness of sessions.
- Mandate the preparation of a minute book to collect copies of all documents that have been used or produced.

**IX. Recommendations for Implementing Standing Order Revisions**

The management of legislative procedures and practise is ideally conducted by a research unit within the existing parliamentary secretariat structure. Such specialised procedural research office can provide the House with a focal point for all questions regarding the application of parliamentary rules. One excellent example for such unit is the Table Research Branch of the Canadian parliament, established in 1980. This professional cadre is dedicated to providing procedural expertise, research, advice, archiving, training, professional development, and outreach.\(^\text{96}\) It has become the

---


Canadian House of Commons’ institutional memory, and the creator of a comprehensive reverence work on parliamentary procedure. Like the Canadian example of the Table Research Branch shows, the correct implementation of exiting rules and procedures, as well as their amendment and the development of new rules is best placed in one office within the House.

Besides providing accurate and timely information and advice to the Speaker, to the Clerk, and to Members or Parliament, the staff of a procedural office can compile, catalogue and synthesise information regarding the procedures, practices and precedents within the House. It can become the place to conduct the procedural training of House staff and prepare briefings, practical guides, and induction trainings for members. To effectively discuss and oversee the implementation of procedural changes, many parliaments have formed Standing Committees on Procedure and House Affairs, like at the Canadian House of Commons, or Modernisation Committees, like for example, at the British House of Commons. Ultimately, it is up to the members to drive change.

X. Summarised best practice

The Functions of the Speaker

Rules regarding the Speaker should ideally cover the following issues:

- Define the selection or election of the Speaker.
- Guarantee that the Speaker is acting free of political interest and upholds parliamentary ethics.
- Define the leadership function: The Speaker represents and speaks for the parliament to other organisations and to the public.
- Define the function as presiding officer: The Speaker presides over plenary sessions. The Speaker appoints parliamentary committees.
- Define the administrative function: The Speaker acts as the chief administrative officer of parliament. The Speaker exercises supervision over all its activities and servants.

Presiding Officers

Rules regarding Presiding Officers should cover the following issues:

- Detail the authorities of the presiding officer.
- Guarantee that the presiding officer exercises wide discretion during meetings.
- Provide the presiding officer with great latitude in assisting members in exercising their rights and privileges, without being partisan.
- Allow the presiding officer to relax procedures from the strictest level to speed up debate, but urge a return to stricter formality if difficulties arise.
- Encourage having an induction training on rules for presiding officers.
- Provide for procedural officers available at committees and plenary sessions for assisting the presiding officer.

House Factions

The rules regarding House factions should cover the following issues:

- Spell out the criteria for the formation of party factions in a precise way.
- Define the rights and responsibilities of party factions in the House.
- Guarantee the freedom of factions in organising their internal affairs.
- Clearly define the funding criteria of factions and other support provided by the House.
• Define what support services factions can have, how staff is to be recruited, and to whom the staff of factions reports.

• Provide factions with the opportunity for consultation among factions through all-party business committees.

**Parliamentary Committees**

Rules regarding parliamentary committees should guarantee the following:

• Define the minimum requirements for the formation of a committee without restricting their numbers. A parliament can provide for as many committees as it finds useful.

• Allow for flexibility in the establishment of committees, but no committee should be established unless it is really needed.

• The name, method of selecting members, selecting the chair, and usual duties of each committee should be specified.

• The composition of a committee must reflect the balance of majority and minority factions in the House.

• A committee must allow for more time being available for discussion for each subject than in the plenary.

• A committee should have more informal procedures than the plenary.

• Define the authority of committees to call for witnesses and reports.

• The committee system should be regulated in a way to guarantee the generation of expertise.

• Define the kind of support services a committee can rely on.

• Define the right of committees to hire expertise from outside the parliament.

• In the committee, the house member should be able to enjoy some autonomy and the ability to play out his expertise and knowledge of a policy issue.

• Rules on committees should define the practice of member substitutions during meetings.

**Members of Parliament**

The rules on the members of parliament should cover the following issues:

• Clearly identify the rights and duties of legislators, like the right to attend meetings, to present motions, to speak on questions, to vote, to nominate, to be nominated for offices, to access records and documents, to insist in the enforcement of rules, the privilege of immunity, to have a fair hearing before an ethics council, to resign from office.

• Provide flexible attendance requirements, like call for participating in voting for decisions, rather than minimum quorums for attention.
• In order to balance otherwise overlapping commitments of members, meeting schedules for committees can be regulated.

• Guarantee that all members have a right to access the proceedings of meetings.

• Define the resources available to members to fulfill their responsibilities in the House and towards their constituents.

• Provide strict regulations on facilities for members and the use of allowances.

**Debate and the Right of Free Speech**

The rules regarding debate and discussion should cover the following issues:

• Guarantee regular parliamentary sessions.

• Guarantee free interchange of thought and assure that every member has the opportunity to be heard.

• Guarantee the freedom and equality of members by obliging members to respect other members.

• Allow for a degree of independence of members from their political parties.

• Maximize the time available for discussion without restricting that all views will be considered before a decision is made.

• Clearly regulate question hours and spontaneous follow-up question.

• In order to allow for discussions and debates to progress, regulate digressions and dilatory tactics.

• Specify sanctions for the misconduct of members.

**The Discussion of Legislative Proposals**

Rules regulating the discussion of proposals should include the following issues:

• Regulate minimum time for announcing meetings to allow for preparations.

• Regulate the schedule for the various readings for a proposal.

• Regulate in detail how question and answering sessions should be conducted.

• Specify that participants from outside who attend meetings must deliver talking points in advance.

• To avoid overlapping commitments of members, provide a schedule of daily, weekly, and monthly legislative activities.

• Assure that the legislation process can be conducted in a respectful manner.

• Specify sanctions in the event of misconduct of members
Voting and Consensus in Parliament

The rules regulating voting and consensus in should include the following issues:

- The defining of the vote is important.
- Guarantee voting as a fundamental right.
- Guarantee that a member has the right to abstain from voting.
- Define that all votes are binding.
- Make it the duty of the presiding officer to announce the result of a vote.
- Voting records should be produced and made available.

Transparency and Reporting of Parliamentary Work

The rules on parliamentary transparency should include the following issues:

- Guarantee that maximum disclosure is a guiding principle for all processes in parliament.
- Votes in the plenary should be open to the public.
- Actively support the access to information.
- Define the parliamentary duty of producing of accurate minutes.
- Clearly define the responsibilities for the preparation, correction, and distribution of minutes.
- Include communication with the public and the media as a duty of parliament.
- Parliament has an obligation to publish its documents.
- Clearly and narrowly define exceptions to the disclosure of documents and openness of sessions.
- Mandate the preparation of a minute book to collect copies of all documents that have been used or produced.
Bibliography


Précis of Procedure, House of Commons, Canada, Table Research Branch, last revised, November 2003; http://www.parl.gc.ca/information/about/process/house/precis/titpg-e.htm


“Rules of Procedure and Conduct of Business in the Lok Sabha”, Indian House of the People, n.n.


