

Law Audience Journal, Volume 3 & Issue 1, 1st June 2021,
e-ISSN: 2581-6705, Indexed Journal, Published at
<https://www.lawaudience.com/volume-3-issue-1/>, Pages: 83 to 102,

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Cite this article as:

MR. HARSHIT SHARMA & MS. MARYANKA, *Who Leads the Opposition? An Analysis of Constitutional and Electoral Peculiarities in the Aftermath of the Lok Sabha Elections of 2014 & 2019*, Vol.3 & Issue 1, Law Audience Journal, Pages 83 to 102 (1st June 2021), available at <https://www.lawaudience.com/who-leads-the-opposition-an-analysis-of-constitutional-and-electoral-peculiarities-in-the-aftermath-of-the-lok-sabha-elections-of-2014-2019/>.

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Publisher Details Are Available At:

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(E-ISSN: 2581-6705)

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ABSTRACT:

“2014 & 2019 Lok Sabha elections result stupefied the whole nation when BJP sailed through the NAMO wave and recorded land sliding victories. These two general elections also saw the grand old party Congress in the dismal position. It was able to get only 44 out of 543 Lok Sabha seat or 8.1% seats in the 16th Lok Sabha and 52 out of 543 Seats in 17th Lok Sabha Elections. Several controversies surrounded these elections but the prime one was failure of the congress to qualify for Leader of Opposition on its own on the basis 10% rule. So, this Research Paper seeks to look in the situation that who leads the opposition when there is no well-established opposition party on the floor of parliament due to non-acquiring of 10% seats in parliament. Further a judicious attempt has been made to analyse the situation that what happens to the appointments of various constitutional post which requires the involvement of the leader of opposition into their appointment. So, the researchers have endeavoured to make a holistic analysis of all constitutional and statutory provisions in order to trace this long followed 10% rule and has tried to explain the electoral peculiarities especially in the aftermath of the Lok Sabha elections 2014”.

Keywords: Constitution, General Elections, Leader of Opposition, Parliament Act, Speaker.

I. INTRODUCTION:

"People shouldn't be afraid of their government. Governments should be afraid of their people."~ Alan Moore

Democracy is the basic feature of Indian Constitution and the Leader of Opposition is the pillar upon which Democracy stands. May 16th 2014 will be remembered in Indian Political history as a special and magical date. India became free of coalition politics and its repercussions finally after 30 years. This day India got a visionary leader in form of Prime Minister Narendra Modi with scintillating majority for BJP. It was viewed as essentially vote for Mr Modi and his Gujarat development model. The campaign successfully eroded the communal image of Mr.

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Modi and showed him as a thinking man, a man who would transform India and usher it into the truthful and rightful place of India. This day also saw the grand old party Congress in the dismal position. It was able to get only 44 out of 543 Lok Sabha seat or 8.1% seats in the 16th Lok Sabha. Similarly in 2019 General Elections for 17th Lok Sabha Congress the largest opposition party secured 52 Seats, three short of 55 Seats based on 10% Rule.

II. IMMEDIATE CONTROVERSIES:

II.I Lack of Minimum Mandate:

Congress being the second largest party after ruling BJP consequently demanded that it should be given status of Leader of the Opposition Party (LOOP). BJP showed reluctance to accord this post and status on a plank of 10% rule.¹ As per conventional norms a party and its leader can be accorded status of LOOP only if it gets 10% seats in the Lok Sabha and if no opposition party has 10% of seats then there can be no LOOP. The Congress was scrambling for LOOP and the BJP was denying it.

II.II Imran Ali vs. Union of India²:

Immediately after the results, Imran Ali filed a PIL into Delhi High Court seeking the appointment of a LoP in parliament. The petitioner contended that the Central Vigilance Commission Act, 2003 (hereinafter referred to as CVC, Act, 2003), Right to Information Act, 2005 (hereinafter referred to as RTI, Act, 2005), etc. provide that the LOOP shall be a part of the committee in deciding matters of appointment and hence a LOOP would have to be appointed.

II.III Misuse of Power by Speaker:

A further contention was that Rule 121 of the Directions by the Speaker [issued] under Rule 389 of the Rules of Procedure and Conduct of Business in Lok Sabha was “wrongly” invoked

¹ Congress, BJP spar over leader of opposition’s post, Available on-
<http://www.livemint.com/Politics/VnHcvjtzCNDRfu7DEhS8sJ/No-decision-yet-on-leader-of-opposition-status-to-Congress.html>, (Last Visited 25 February, 2021).

² Imran Ali vs Union of India, W.P.(C) 5745/2014.

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to deny the appointment of a LOOP. So legitimacy of speaker's power was also brought into question.

II.IV Lok Sabha Speaker Sumitra Mahajan’s response to RTI Query:

Two months after Congress' demand for Leader of Opposition's post was rejected by Lok Sabha Speaker Sumitra Mahajan, the Lok Sabha Secretariat in response to a RTI query said there is no minimum percentage of seats required for appointment of LOOP in Lok Sabha.³ So Miss Galgali filed an application seeking information on the compulsory minimum strength required for appointment of LOOP. Moreover Sonia Gandhi wrote a letter to Speaker regarding giving Congress status of LOOP.

In the next section researchers will try to analyse each controversy in detail and will try to find remedies available in each controversy through various arguments and course of actions of concerned authorities. Let us first try to understand who is leader of opposition and what its significance is.

III. ARE THERE TRACES FROM WHERE THIS 10% RULE ORIGINATED?

There is no evidence of 10% Rule being laid down formally in any Act for deputing Leader of Opposition. This 10% Rule was laid in The Leaders and Chief Whips of Recognised Parties and Groups in Parliament (Facilities) Act, 1998 as the quorum to constitute a meeting of either House of Parliament, not as a rule to depute LOOP on the basis of it.

But this practice of 10% rule for deputing LOOP has become so regular that it has become one of the most important conventional practice and speaker always take this under consideration for appointing LOOP.

³ Leader of Opposition, Available on- <https://electionlawindia.wordpress.com/>> (Last Visited 25 February, 2021).

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III.I A Trace from the Constituent Assembly:

On digging deeper, the researchers found out that Constituent Assembly also discussed the issue of Leader of Opposition in Volume 8 Page 5 of Constituent Assembly Debates. There the issue was limited to "*whether State should pay salary to Leader of Opposition or not as on face of it would be case of conflict of interest*".

However, remarks of some leaders that are reproduced below are noteworthy:

III.I.I Mr. Z.H. Lari⁴ (United Provinces: Muslim): "*Firstly, I feel that it is necessary to promote parliamentary opposition which along with the rule of law and a strong press constitutes the bulwark of democracy. Secondly, I want to give statutory recognition to the institution of parliamentary opposition, which unfortunately has come to be regarded in certain circles as tantamount to sedition, and thereby dispel a misconception. Thirdly, I want to create conditions in which a dead chamber may revive into a lively legislature.*" And lastly, I want to complete the edifice of parliamentary democracy which is being transplanted from the surroundings of England to Indian environments."

III.I.II Shri Ramnarayan Singh (Bihar: General)⁵: "*Sir, although I do not support Mr. Lari's amendment, I think he has raised an important constitutional issue which the House should consider. I am not an admirer of the British constitution. They have got the party system which I think strikes at the very root of democracy. We are told that in that country there is opposition and the Leader of the Opposition is paid. It is a sound principle. In this country we have just got freedom, and our own party i.e., the Congress Party, has got no opposition to it.*

I have seen how things have been going on here and I feel that there must be a strong opposition to criticise our actions and review them. In the Mahabharata we find Bhishma and Arjuna fighting in opposition to each other and there Bhishma tells Arjuna how to kill Bhishma himself.

⁴ Constituent Assembly Debate.

⁵ *Ibid.*

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In the same way I think that Government is good which creates and encourages opposition and which is always ready to retire. A Government which does not like opposition and always wants to be in power is not a patriotic but a traitor Government. In several provinces, in my own province of Bihar, I know what is happening. There is no opposition to the Congress Government and all sorts of scandals are going on.

I therefore feel that there should be an opposition to criticise Government and this opposition should be encouraged. This need not be in the constitution itself but we must consider it as soon as the constitution is passed." However, again there is no trace of 10% rule.

IV. PROVISIONS RELATING TO LEADER OF OPPOSITION:

The relevant Law and Constitutional provisions that concerns LOOP are as follows:

IV.I The relevant statute defining the term “Leader of Opposition” is the Leaders of Opposition in Parliament Act, 1977:

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

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

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IV.I.I Analysis of the Definition:

On analyzing above definition, LOOP is leader of that party in opposition to government that has greatest numerical strength and it has to be recognized by the Speaker of Lok Sabha. Here discretion is of Speaker of Lok Sabha or Chairman of RS as the case may be. But the definition is silent upon 10% rule & it only states greatest numerical strength.

IV.II There is another Act called "The Leaders and Chief Whips of Recognised Parties and Groups in Parliament (Facilities) Act, 1998", that provides for the mechanism of the recognition of leaders of various Parliamentary Parties and Groups. Under this Act terms Recognized Parties and Groups are defined as:⁶

Definitions: *In this Act, unless the context otherwise requires:*

(a) "recognised group" means:

(i) in relation to the Council of States, every party which has strength of not less than fifteen members and not more than twenty-four members in the Council;

(ii) in relation to the House of the People, every party which has strength of not less than thirty members and not more than fifty-four members in the House;

(b) " recognised party" means:

(i) in relation to the Council of States, every party which has strength of not less than twenty-five members in the Council;

(ii) in relation to the House of the People every party which has strength of not less than fifty-five members in the House.

This Section 2(b)(ii) might be the genesis of 10% rule. However it is to be noted that it is for Chief Whips of Recognized Parties and Groups in the Parliament and not for the Leader of the

⁶ The Leaders and Chief Whips of Recognized Parties and Groups in Parliament (Facilities) Act, 1998.

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Opposition. So it depends upon the numerical strength and discretion of the Speaker to recognize a leader of Opposition.

IV.II.I Analysis of The Leaders and Chief Whips of Recognised Parties and Groups in Parliament (Facilities) Act, 1998:

Thus, to issue a whip a party needs to have 55 members in Lok Sabha and to convene a meeting quorum required is 10% or 55 members. However, LOOP is on numerical strength and discretion of Speaker/Chairman. Speaker on his discretion can appoint LOOP provided that party need to be second largest party.

IV.III Article 100(3) of the Constitution provides that:

"Until Parliament by law otherwise provides, the quorum to constitute a meeting of either House of Parliament shall be one tenth of the total number of members of the House."

IV.IV There is another Act called "Rules of Procedure and Conduct of Business in Lok Sabha".

A reading of this Act tells us that deputing of LOOP is essentially discretion of the Speaker. Now this discretion is subjective satisfaction on objective consideration by the Speaker. The Speaker is granted power under Rule 389 and Other Rules of Procedure and Conduct of Business in Lok Sabha. Apart from this the Speaker of Lok Sabha issues directions from time to time for regulating, subject to the provisions of the rules, certain matters not specifically provided for in the rules and also certain matters relating to the detailed working of the rules under the inherent powers of the Speaker.

IV.V Chapter IX of the General Directions of Speaker deals with "Recognition of and facilities to Parliamentary parties and groups"⁷:

⁷ Recognition of and facilities to Parliamentary parties and groups.

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The relevant rules for our discussion are Rule 120 and 121. Rule 120 provides that speaker may recognize an Association of Persons (AOP) or Group as a Parliamentary Party for the purpose of functioning of the house and the decision of speaker is final. Thus, it is purely discretion of Speaker and his decision is final. Rule 121 provides the considerations to be taken into while recognizing AOP or Group.

120. The Speaker may recognise an association of members as a Parliamentary Party or Group for the purpose of functioning in the House and the decision of the Speaker shall be final.

121. In recognising a Parliamentary Party or Group the Speaker shall take into consideration the following principles:

(1) An association of members who propose to form a Parliamentary Party-

(a) shall have announced at the time of the general elections a distinct ideology and programme of Parliamentary work on which they have been returned to the House;

(b) shall have an organisation both inside and outside the House; and

(c) shall have at least a strength equal to the quorum fixed to constitute a sitting of the House, that is one-tenth of the total number of members of the House.

(2) An association of members to form a Parliamentary Group shall satisfy the conditions specified in parts (a) and (b) of clause (i) and shall have at least a strength of 30 members.”

IV.V.I Analysis of the Chapter IX of the General Directions of Speaker ("Recognition of and facilities to Parliamentary parties and groups):

Rule 121 provides that considerations to be taken into while recognizing AOP or Group. The crucial point is Rule 121(1)(c) that provides that an association of persons to form a parliamentary party or group should have at least a strength equal to the quorum fixed to constitute a sitting of the House, that is one-tenth of the total number of members of the House. Art 100(3) of the Constitution provides this as 10% or 55 Seats in case of Lok Sabha This could

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be guiding force behind using 10% rule by speaker and on the basis of this practice has been followed for many years.

V. JUDICIAL PRONOUNCEMENT ON THIS RULE:

V.I AK Subbaiah vs. Karnataka Legislature Secretariat⁸:

This case was instituted by way of PIL to quash notification that declared the Respondent Mr. RV Deshpande "Leader of the Opposition". Petitioner alleged that the party didn't have requisite number of members and it is less than 10% of total seats. The Petition was dismissed on the grounds that the decision of speaker is final in recognizing LOOP. It is not open for Judicial Review.

V.II Karpoori Thakur vs. State of Bihar⁹:

In this case originally Petitioner's party had 42 members, (which was above the 10% of total Vidhan Sabha Seats in Bihar), and was having the status of leader of Opposition. Later there was split and the Petitioner's party was left with 31 members, which was less than 10% of total Vidhan Sabha seats. Consequently, the petitioner lost his status of LOOP.

He moved petition before the Speaker to recognize him as the LOOP on the ground that he remains the leader of single largest party and on the basis of numerical strength he should be declared LOOP.

The speaker declined the request. Matter went before Patna High Court. Though the Petition was mainly challenged on the ground of maintainability under Art. 212 of the Constitution. The Patna High Court held that the Speaker's decision is not on the basis of anything mentioned in the Act, *but on the basis of established practice*. Since the established practice was followed, there was no question of any illegality or unconstitutionality. The Petition was dismissed.

⁸ AK Subbaiah vs Karnataka Legislature Secretariat, ILR 1993 KAR 1137.

⁹ Karpoori Thakur vs State Of Bihar (AIR 1983 PAT 86).

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VI. SIGNIFICANCE OF LEADER OF OPPOSITION:

Apart from making Democracy a healthy democracy, LOOP serves as member on panel of various bodies that makes appointments to various statutory bodies like CVC, CIC, CBI-ED, NHRC, Lokpal and the unconstitutional declared NJAC.

VI.I Central Vigilance Commission:

CVC Act 2003 was constituted to inquire into offences alleged to have been committed under the Prevention of Corruption Act, 1988. Section 4 of the Act provides for the constitution of selection committee.

VI.I.I Relevant Statute:

Section 4 of the CVC Act is reproduced here under:¹⁰

4. (1) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed by the President by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of-

- a) the Prime Minister- Chairperson;***
- b) the Minister of Home Affairs- Member;***
- c) the Leader of the Opposition in the House of the People- Member.***

Explanation: *For the purposes of this sub-section, "the Leader of the Opposition in the House of the People" shall, when no such Leader has been so recognised, include the Leader of the single largest group in opposition of the Government in the House of the People.*

(2) No appointment of a Central Vigilance Commissioner or a Vigilance Commissioner shall be invalid merely by reason of any vacancy in the Committee.

¹⁰ Section 4 (2) CVC Act 2003.

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IV.I.II Analysis of Situation in Absence of Leader of Opposition:

Plain reading of Section 4 clearly shows that selection committee for CVC comprises of PM, Home Minister and LOOP in Lok Sabha. It further envisages the situation that if there is no LOOP then the leader of single largest group will sit in selection committee. Thus, aftermath of both 2014 & 2019 General Elections, Congress (I) emerged as the single largest party (and there is no larger group) is entitled to sit in the selection committee of CVC. Further sub-section (2) provides that merely vacancy in any committee will not render the appointment invalid. So issues related to appointment of CVC will be dealt in this manner.

VI.II Chief Information Commissioner:

Under Section 12(3) of the RTI Act, 2005 the selection Committee for CIC comprises of PM, LOOP and a Union cabinet minister recommended by the PM.

VI.II.I Relevant Statute:

Section 12 (3) is reproduced here under:¹¹

12(3) The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of-

- (i) the Prime Minister, who shall be the Chairperson of the committee;*
- (ii) the Leader of Opposition in the Lok Sabha; and*
- (iii) Union Cabinet Minister to be nominated by the Prime Minister.*

Explanation: *For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of Opposition.*

¹¹ Section 12 (4) , CIC Act.

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VI.II.II Analysis of Situation in Absence of Leader of Opposition:

Mere reading of Section 12(3) clearly shows that selection committee for CIC comprises of PM, a Union Cabinet Minister nominated by the Prime Minister and LOOP in Lok Sabha. It further envisages the situation that if there is no LOOP then the leader of single largest group will sit in selection committee. Thus, like in the case of CVC, instead of LOOP leader of largest group can be on selection committee as a deemed LOOP.

VI.III National Human Rights Commission:

Section 4 of the Human Rights Protection Act, 1993 provides for appointment of Chairperson and other Members.

VI.III.I Relevant Statute:

Section 4 is reproduced here under:¹²

4. Appointment of Chairperson and other Members

(1) The Chairperson and (the Members shall be appointed by the President by warrant under his hand and seal;

Provided that every appointment under this sub-section shall be made after obtaining the recommendations of a Committee consisting of-

- (a) The Prime Minister- Chairperson***
- (b) Speaker of the House of the People- Member***
- (c) Minister in-charge of the Ministry of Home Affairs in the Government of India- Member***
- (d) Leader of the Opposition in the House of the People- Member***
- (e) Leader of the Opposition in the Council of States- Member***
- (f) Deputy Chairman of the Council of States- Member***

Provided further that no sitting Judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed except after consultation with the Chief Justice of India.

¹² S. 4 of the Human Rights Protection Act, 1993.

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(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of a vacancy of any member in the Committee referred to in the first proviso to sub-section (1).

VI.III.II Analysis of Situation in Absence of Leader of Opposition:

Thus, for appointments at NHRC it has to be a LOOP, no exception like CVC, CIC has been carved off that in absence of LOOP leader of largest party shall sit in the selection. Further sub section (2) provides that no want of vacancy in selection committee will invalidate the selection. Thus, even if there is no LOOP then also appointment to NHRC will be valid.

VI.IV Lokpal and Lokayukta:

Section 4 of the Lokpal and Lokayukat Act, 2013 provides selection committee of PM, Speaker of Lok Sabha, LOOP, CJI or SC Judge nominated by him, one eminent jurist nominated by the other members of the selection committee. Section 4 of the Act deals with composition of selection committee for selecting Lokpal.

VI.IV.I Relevant Statute:

Section 4 is reproduced here under:¹³

4 (1) The Chairperson and Members shall be appointed by the President after obtaining the recommendations of a Selection Committee consisting of-

- (a) the Prime Minister- Chairperson;*
- (b) the Speaker of the House of the People- Member;*
- (c) the Leader of Opposition in the House of the People- Member;*
- (d) the Chief Justice of India or a Judge of the Supreme Court nominated by him- Member;*
- (e) one eminent jurist, as recommended by the Chairperson and Members referred to in clauses (a) to (d) above, to be nominated by the President- Member.*

¹³ S.4 of the Lokpal and Lokayukat Act, 2013.

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(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Selection Committee.

VI.IV.II Analysis of Situation in Absence of Leader of Opposition:

Thus, for appointments of Lokpal, it has to be a LOOP, no exception like CVC, CIC has been carved off that in absence of LOOP leader of largest party shall sit in the selection. Further sub section (2) provides that no want of vacancy in selection committee will invalidate the selection. Thus, even if there is no LOOP then also appointment of Lokpal will be valid.

VI.V National Judicial Appointment Commission:

National Judicial Appointment Commission Act provided for selection committee of CJI, 2 SC Judges, Law Minister and 2 Eminent Jurist. These 2 eminent jurist were going to be recommended by PM, CJI and leader of opposition in Lok Sabha.

VI.V.I Analysis of Situation in Absence of Leader of Opposition:

Thus, the panel of National Judicial Appointment Commission also required presence of a LOOP and no exception like CVC, CIC was carved off that in absence of LOOP leader of largest party shall sit in the selection. Although the NJAC Act has been held Unconstitutional but in *TSR Subramaniam case*¹⁴ S.C said that with reference to NJAC the leader of the single largest group in opposition shall be deemed to be leader of opposition.

VII. ANALYSIS OF THE TREND OF LOOP SINCE INDEPENDENCE:

- i. Dr Ram Subhag was the first Leader of Opposition from 1969-1970 in the 4th Lok Sabha. Before him in first three Lok Sabha, there was no leader of opposition. If we apply above Rule 121(1)(c), then it is clear that in first three Lok Sabha largest opposition party didn't

¹⁴ AIR 2015 SC 263.

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had quorum to constitute and claim for leader of opposition. Hence none was given the status of LOOP for first three Lok Sabha elections.

- ii.* Even in the Fourth Lok Sabha initially there was no LOOP as the largest opposition party was Swatantra Party with 44 seats out of 520 seats. It is only in 1969 when the Indian National Congress was split as Congress (I) and Congress (O), in which Congress (O) moved with 60 Lok Sabha MPs. Subsequently the largest opposition party was Congress (O) with 60/520 seats and hence its leader Dr Ram Subhag was declared as the LOOP.
- iii.* Position of Fifth Lok Sabha was peculiar. Here the single largest party was CPI (M) with 25/518 seats but single largest group was National Democratic front with 51/518 members. So, in this case 10% would be 52 members.
- iv.* Thus, what it seems that in consonance with the practice that *LOOP has to be the Leader of the opposition Party and not alliance.* Therefore, none was elected as LOOP.
- v.* Next LOOP was Dr YB Chavan of Congress (I) which was largest opposition party in 6th Lok Sabha with 153 members. This was period of turmoil and saw four LOOPS.
- vi.* Seventh and Eighth Lok Sabha didn't have significant quorum to constitute LOOP and hence the post remained vacant. Ninth Lok Sabha saw Rajeev Gandhi as LOOP. His party Congress (I) was the single largest party but failed to meet the magic number and choose to sit in opposition rather than on treasury bench. This was a murky period of coalition politics.
- vii.* Similarly, 10th Lok Sabha onwards single largest party in opposition always had much more seats than the quorum required to constitute a meeting under Art. 100(3) and hence there was always a LOOP. However, the position was different in 16th Lok Sabha: Congress (I) was the single largest opposition party but with only 44/543 seats thus not constituting quorum under Art 100(3).

VIII. ANSWERS TO THE CONTROVERSIES:

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VIII.I Imran Ali vs. Union of India¹⁵:

Court in this case gave its judgement in favour of Union of India. Court based its reasoning on a 5-point logic:

- i.* This is not the first time that in Lok Sabha none has been appointed / recognised as the Leader of Opposition; There are instances of earlier Lok Sabhas which also did not have the Leader of Opposition;
- ii.* Contention of the petitioner that the appointment of the Leader of Opposition is necessary for making appointments under the Protection of Human Rights Act, CVC Act, RTI Act and the Lokpal and Lokayuktas Act is also not correct, in as much as all the said Statutes provide that any selection made thereunder would not be invalid for the reason of any vacancy in any of the offices required to participate in appointment thereunder.
- iii.* The amendment to the effect that leader of the single largest party shall be deemed to be the Leader of Opposition has already been carried out in the CVC and the RTI Act and is underway in the Lokpal and Lokayuktas Act and in the Protection of Human Rights Act.
- iv.* The Speaker is not bound to recognise anyone as the Leader of Opposition.
- v.* The petition is liable to be dismissed summarily for the reason of, having made reckless allegations against the High office of the Attorney General of India and which is indicative of the petition being not bona fide and having been filed with a political agenda.

VIII.II Sumitra Mahajan's Response to RTI Query and Sonia Gandhi's

Request:

- i.* After consideration of applicable provisions of relevant statutes, directions by the Speaker Lok Sabha (Directions 120 and 121) and several past precedents repeatedly

¹⁵ Imran Ali v Union of India, W.P.(C) 5745/2014.

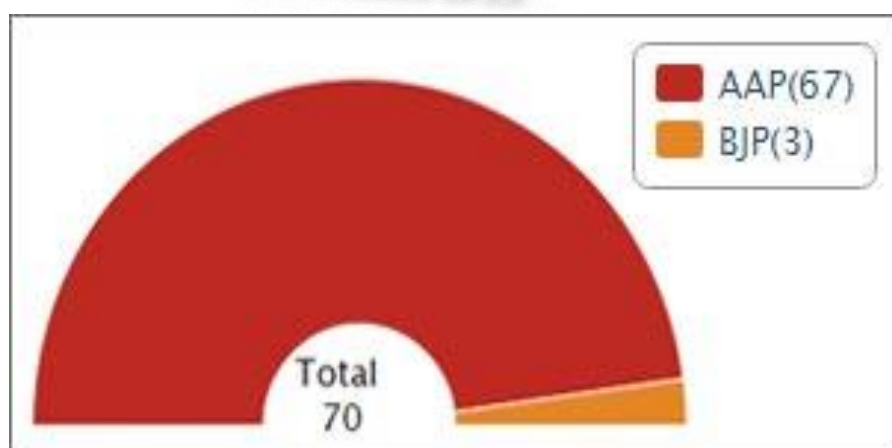
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followed for the last nearly 60 years which have been based upon decision taken by many eminent Speakers in the past, it has not been found possible for Speaker to accede to their request.

- ii. Speaker said decision has been taken after studying the rules and traditions and after taking experts' opinion on the issue. No Opposition party has more than 55 (seats). The rule that a party should have a minimum of 10 per cent seats in the House (for being accorded the status of LoP) has not changed. The Speaker also said in 1980 and 1984, the House had no Leader of Opposition because no party had the required strength.
- iii. The Lok Sabha secretariat also informed that the LOOP's post was vacant in the 1st, 2nd, 3rd, 5th, 6th, 7th, and 8th Lok Sabha. It said the query regarding the requirement of Leader of Opposition for selection of heads of institutions or commissions has been transferred to Law and Justice Ministry.

IX. PECULIARITIES FOLLOWING THE 2015 DELHI ELECTION:

IX.I Tracking 2015 Elections Results¹⁶:



SEATS REQUIRED TO FORM LOOP = 7

IX.II Initial Moves by the Parties:

¹⁶ Election Commission of India.

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The AAP’s co-supremo Kumar Vishwas said that he was interested in giving LOOP status to BJP's candidate for true functioning of democracy. As per him strong opposition is essential feature of Democracy. Subsequently Manish Sisodia said the party had not taken a decision and would think about it later. "Let BJP ask for it at least. We have not taken any decision on this matter," He also suggested that at least 10% of the seats should be occupied by the opposition to qualify for LOP.

But he said that they know it is well established that LOP can be given to the leader of the opposition party, irrespective of how many seats they have. So, they will be looking forward to it. In its response Senior BJP member and Rohini MLA Vijender Gupta said that they had no plans of making any such proposal to AAP but would instead follow whatever the law is on the matter.

IX.III Judicial Stance on such Possibilities:

The act of speaker of giving status of LOOP to a person, even though his party does not have 10% seats of total seats, has been seen in past.

In the case "*AK Subbaiah vs. Karnataka Legislature Secretariat*¹⁷" where petitioner alleged that the party didn't have requisite number of members and it is less than 10% of total seats. High Court of Patna dismissed the Petition on the grounds that the decision of speaker is final in recognizing LOOP. Hence it was rejected.

IX.IV Final Outcome of Delhi Vidhan Sabha Controversy:

The Honourable Speaker Ram Niwas Goyal recognised Shri Vijender Gupta, a member of Legislative Assembly, who is leader of the House of the party in Opposition to the government having greatest numerical strength, as Leader of Opposition in the Vidhan Sabha of the

¹⁷ AK Subbaiah vs Karnataka Legislature Secretariat, ILR 1993 KAR 1137.

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National Capital Territory of Delhi. He further went on saying that granting of LOP post to the BJP was victory of democratic values and his party had approached the Lieutenant Governor over alleged violation of Assembly Rules.

X. CONCLUSION:

The decision to deny Congress party post of LOOP in our opinion is correct and valid and is in perfect harmony and consonance with the practice to make a LOOP or keep that post vacant made in past.

The Power to speaker in this regard flows from Art 100(3) of the Constitution, which evolves, in form of Rule 121(1) (c) of General Directions by the Speaker. So, with respect to 2014 Lok Sabha elections, it was justified on part of speaker to not grant LOOP status to Congress, as they could not acquire 10% total seats.

Since this 10% rule has become a conventional practice since independence, and has ingrained into our system prominently, therefore non-according the status of LOOP is justified.

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- iii. S. 4 CVC ACT.*
- iv. S.12 CIC ACT.*
- v. S.4, Lokpal and Lokayukal Act, 2013.*
- vi. S. 4 of the Human Rights Protection Act, 1993.*

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