16

The Debate on the Constructive Vote of No Confidence in India – Trading in Accountability for Stability?

By *Malte Pehl*[*]

Abstract: *In the effort to devise solutions to the problem of government instability and turnover, the Indian debate over the last 25 years has turned repeatedly, among other things, to a seemingly easy fix, namely the introduction of the constructive vote of no confidence along the lines of the model provided by the German Basic Law. This paper reviews the Indian debate and suggests four reasons for why such a change in the rules of procedure in the Indian legislature is not advisable or necessary. These are rooted in the diminishing need for instruments to curb government turnover at the Union level, in the argument that the debate about the vote of no confidence misreads the causes of instability and in the concern that such a change would potentially debilitate the legislatures ability to hold government accountable, thereby undermining the very essence of parliamentary democracy itself.*

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A. Introduction

With somewhat surprising regularity public discourse on parliamentary reforms in India over the last twenty-five years has turned to a feature of the German constitution (the Basic Law), which has been made out by some observers in India as a potential panacea against governmental instability: the constructive vote of no confidence. Its possible introduction into the Indian system of government has been debated on various occasions: in the early 1990s, then immediately after the fall of the Vajpayee government in 1999, after the submission of the report of the National Commission to Review the Working of the Constitution in 2002, and in the run-up to votes of confidence and no confidence in 2008 and 2012.

In assessing the advantages and disadvantages of such an institutional change,[1] in principle, many measures are conceivable to achieve an improvement in terms of governmental instability, and many of these have been suggested before by eminent scholars of law and political science, as well as by politicians and parties themselves. Ideally, conventional arguments of a real or imagined "compatibility" or incompatibility" of such a "constructive"

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1 The term "institutions" is used here to mean "rules of the game" in sense employed by *Douglass C. North, Institutions*, Institutional Change and Economic Performance, Cambridge 1990, p.3, rather than in the sense of "organizations". Whenever the term is referred to in this study, it is meant to refer to the constitutional, legal or otherwise established regulations governing politics, esp. confidence motions, as relevant in their respective national context.

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design of a motion of no confidence procedure with a Westminster-style democracy such as India's should have no place in this debate. India has long since 1947 departed from the British model of parliamentary government in a great many ways. As such, appeals to history or tradition in arguing for or against institutional change should be treated as secondary seat for the time being and make way for a logic of institutional appropriateness and practicality in view of the issues and possible solutions at hand.

Following an introduction to the debate on this proposed design change, this article will discuss insights from scholarship on votes of no confidence procedures in comparative political studies and then outline arguments based on the Indian context and the comparative literature for why such a change to a constructive design in India would not be advisable overall.

B. The Indian Debate and Its Institutional Background

One might begin by asking why a change to the current system of voting governments out by a "destructive" vote of no confidence,[2] or by denying a sitting government a successful vote of confidence, is a topic for debate over reforms to the constitution and to the system of government in India. Two putative goals are often cited when scholars and commentators argue in favor of the introduction of the constructive vote of no confidence into India's system of government: curbing governmental instability and eliminating blackmail potential within coalition governments. Before discussing the issue of government instability in more detail, some remarks on the constitutional and legal framework for the votes of confidence or no confidence will help to give a background to the discussion of institutional reforms in India.

Currently, there are two ways in which the Indian legislature can express its lack of confidence in the Council of Ministers, thus triggering the resignation of the Prime Minister. Both are tied to the principle of parliamentary government, i.e. the principle that the government holds office so long as it enjoys the confidence of a majority in the legislature (in the Indian case the *Lok Sabha* or House of the People) as expressed in Article 75 (3) of the Indian Constitution, which states that "The Council of Ministers shall be collectively responsible to the House of the People."[3] The two methods of voting (or not voting) a Council of Ministers out of office are distinguished by both what is expressed in the vote on the motion (confidence or lack of confidence) and by who introduces the motion (govern-

2 We will use the terms "vote of (no) confidence" and "motion of (no) confidence" interchangeably, even though they refer to two different steps in the process of decision-making on the possible removal of a sitting government. The term "motion" is closer to the legal or constitutional wording in India and other countries and describes the first phase, but the decisive and more interesting phase is obviously that of the actual vote, which is perhaps why most of the literature esp. in political science refers to the "vote of (no) confidence".

3 For a comprehensive analysis of the connection between Cabinet responsibility and confidence votes, see *Lok Sabha Secretariat*, Practice and Procedure of Parliament, New Delhi: Lok Sabha Secretariat, 2009, chapter XXVIII.

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ment or opposition). The regulations governing the "vote of confidence" motion (Rules 184 and 191) are the same governing all motions on matters of public interest and state that:

> *"184. Save in so far as is otherwise provided in the Constitution or in these rules, no discussion of a matter of general public interest shall take place except on a motion made with the consent of the Speaker."*

and

> *"191. The Speaker shall, at the appointed hour on the allotted day or the last of the allotted days, as the case may be, forthwith put every question necessary to determine the decision of the House on the original question."*

A "vote of confidence" motion according to Rules 184 and 191 of the Rules of Procedure and Conduct of Business in the Lok Sabha is typically introduced by the Prime Minister (and thus similar to the *Vertrauensfrage* according to Article 68 of the Basic Law in the German case), and a negative vote, by convention, leads to the resignation of the Prime Minister and the Council of Ministers. A "motion of no confidence" in accordance with Rule 198 of the Rules of Procedure and Conduct of Business (the "destructive" vote of no confidence) may be introduced by any member in the Lok Sabha. The relevant rule states that:

> *"198. (1) A motion expressing want of confidence in the Council of Ministers may be made subject to the following restrictions, namely:*
> *(a) leave to make the motion shall be asked for by the member when called by the Speaker;*
> *(b) the member asking for leave shall, by 10.00 hours on that day give to the Secretary-General a written notice of the motion which he proposes to move.*
> *Provided that notices, received after 10.00 hours, shall be deemed to have been received at 10.00 hours on the next day on which the House sits.*
> *(2) If the Speaker is of opinion that the motion is in order, he shall read the motion to the House and shall request those members who are in favour of leave being granted to rise in their places, and if not less than fifty members rise accordingly, the Speaker shall declare that leave is granted and that the motion will be taken up on such day, not being more than ten days from the date on which the leave is asked for as he may appoint. If less than fifty members rise, the Speaker shall inform the member that he has not the leave of the House.*
> *[…]*
> *(4) The Speaker shall, at the appointed hour on the allotted day or the last of the allotted days, as the case may be, forthwith put every question necessary to determine the decision of the House on the motion."*

Such a motion will be taken up for debate and for a vote within 10 days provided no fewer than 50 members of the legislature rise in support of the motion being taken up when the Speaker calls on them to do so according to Rule 198 (2).

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Both of these types of motions have been used on a number of occasions, but only the motion of confidence has so far been used successfully to actually vote sitting Councils of Ministers and thereby Prime Ministers out of office. The height of the use of both instruments with a combined 13 separate votes of confidence and no confidence were the 1990s.

Even the casual observer will notice that government instability at the national level increased markedly in the 1990s. Between 1989 and 2000, India changed Prime Ministers six times. On three occasions, the lower house of India's legislature, the Lok Sabha, voted a Prime Minister out of office due to failed votes of confidence. Table 1 (below) details the names and years when these votes were held, which ousted the sitting governments at the time. The other three Prime Ministerships (Chandra Shekhar in 1991, Atal Bihari Vajpayee in 1996 and Inder Kumar Gujral in 1998) ended with the resignation of the Prime Ministers and the calling of early elections before votes of confidence even became necessary for them to prove their majority.

Table 1: Prime Ministers Ousted by Confidence Motions

Prime Minister	**Year of Resignation**	**Type of Motion**
V.P. Singh	1990	Vote of Confidence**
H.D. Deve Gowda	1997	Vote of Confidence
Atal Bihari Vajpayee	1999	Vote of Confidence

** Both a motion of confidence and a motion of no confidence had been introduced in the same session of the Lok Sabha. The Speaker took up the motion of confidence introduced by Prime Minister V.P. Singh first in keeping with the convention that government business supersedes other motions, which he lost in the subsequent vote, prompting him to resign. The motion of no confidence by the opposition was thereafter never taken up.

In the case of Prime Minister V.P. Singh, the underlying dynamic leading to the fall of the government was a split in the Prime Minister's own party, the Janata Dal. In the other two cases, coalition partners (the Congress Party and the AIADMK, respectively) had withdrawn their support und thus forced motions of confidence, which were lost in both cases. If political instability became somewhat of a hallmark of government at the national level in the 1990s, it was not restricted to that level alone. At the level of State governments, Chief Ministers also changed frequently during that time period, and often before the official end of the term. Occasionally, this has led to similar proposals of a constructive vote of no confidence being advocated as at the national level.[4]

The accountability of State governments in the various States throughout India is ensured along similar lines as at the Union government level (see Article 164 (2) of the Indian

4 See *Eswaran Sridharan*, Leadership Time Horizons, in India – Their Impact on Economic Restructuring, Asian Survey 31 (1991), pp.1208-1209.

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Constitution). Thus, for example, the Rules of Procedure and Conduct of Business of the Uttar Pradesh Legislative Assembly, 1958 (as amended up to 2001) state:

> *"275. Motion of non-confidence in Ministers - (1) A motion expressing want of confidence in the Council of Ministers may be made with the consent of the Speakers subject to the followings restrictions, namely:*
> *a.leave to make the motion shall be asked for after questions and before the list of business for the day is entered upon;*
> *b.the member asking for leave must, before the commencement of the sitting for the day, deliver to the Secretary a written notice of the motion which he proposes to move.*
> *(2) If the Speaker is of opinion that the motion is in order he shall read the motion to the House and shall request those members who are in favour of leave being granted to rise in their places, and, if not less than one-fifth of the total numbers of the members of the House rise accordingly, the Speaker shall intimate that leave is granted and that the motion will be taken on such day, not being more than ten days from the date on which the leave is granted, as he may appoint. If less than the requisite numbers of members rise, the Speaker shall inform the member that he has not the leave of the House.*
> *[…]*
> *(4) The Speaker shall, at the appointed hour on the allotted day or the last of the allotted days, forthwith put every question necessary to determine the decision of the House on the motion."*

Political instability and frequent changes in executive office have been observable at the State level from the 1980s onward as well. The States of Goa (India's least populous State) and Uttar Pradesh (India's most populous State) are notable examples of highly unstable States with over a dozen changes in Chief Ministerships each since 1989. But Gujarat, Haryana and Maharashtra also have high rates of changes in Chief Ministerships over the last two-and-a-half decades. Between 1990 and 2014 the Indian States on average saw close to eight changes in Chief Ministerships and an average time in office for the respective officeholder of slightly over three years.[5] Due to the limitations of this study, we will only deal with matters at the Union level, but the discussions and conclusions seem equally relevant at the State level.

The concern over increased instability and frequent challenges to the legitimacy of the Council of Ministers due to motions of no confidence or necessary votes of no confidence, has led to a vibrant debate in India over the suitability of the current rules for conducting efficient business of government. This debate ensued in earnest when in 1999, the recently-ousted Bharatiya Janata Party (BJP) promised voters it would consider amending the Indian

5 Author's own calculations based on information on Chief Ministers' time in office obtained from various State government websites.

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Constitution and the respective governing rules towards a constructive vote of no confidence, if elected. Consequently, the BJP-led government set up the National Commission to Review the Working of the Constitution in 2000, which published its findings and suggestions for institutional reforms in 2002.[6] Among its recommendations to improve stability in the Indian political system, the Commission listed the introduction of a "constructive vote of no confidence" (section 4.33.3) with an additional threshold of 20% of legislators having to propose the motion of no confidence for it to be considered in the Lok Sabha. Whenever no-confidence or confidence motions are introduced, India witnesses a healthy debate in the media about the underlying reasons and the likelihood of these motions' passage.[7] There is also an extensive literature in which scholars of law and politics have argued that the introduction of a constructive vote of no confidence would constitute a helpful institutional change for India.[8] Several authors have also noted the specific nature of the expected positive effects of this suggested change, since it would potentially induce greater stability[9] and also lower the potential for smaller parties to extort leading coalition partners by threatening to withdraw support and thereby forcing a "vote of confidence" according to Rules 184 and 191.[10] In the public debate, opponents of such a change have been largely absent from the discussion, but the proposals have nevertheless not gathered much traction in the institutions.[11]

6 See *Government of India*, Report of the National Commission to Review the Working of the Constitution, New Delhi: Government Secretariat, 2002. Available at: http://lawmin.nic.in/ncrwc/ncrwcreport.htm (last accessed 10 July 2015).

7 For example, see *Pankaj Sharma*, Confidence in no-confidence motion very low, Zee News India, 2012, at: http://zeenews.india.com/exclusive/confidence-in-no-confidence-motion-very-low_5851.html, as well as *M.R. Madhavan*, Rules of Confidence, The Indian Express, 12 July 2008, at: http://archive.indianexpress.com/news/rules-of-confidence/334634/ and *Bibhudatta Pradhan*, Vote of no confidence tipped in India over foreign retail, The Australian Financial Review, 21 November 2012, at: http://www.afr.com/news/policy/foreign-affairs/vote-of-no-confidence-tipped-in-india-over-foreign-retail-20121120-jikt0.

8 See *Sridharan*, note 3, pp.1208-1209; *P.R. Dubhashi*, Reflections on the Indian Polity and Some Suggestions for Its Reconstruction, Indian Journal of Political Science, 52 (1991), p.383; *M.P. Singh*, India: Searching for Consensus by Amending the Constitution?, Governance, 5 (1992), pp. 358-373; *Douglas Verney*, From Quasi-Federation to Quasi-Confederacy? The Transformation of India's Party System, Publius: The Journal of Federalism, 33 (2003), pp.153-154; *Subhash C. Kashyap*, Executive-Legislature Interface in the Indian Polity, Journal of Legislative Studies, 10 (2004), p.290.

9 See *Sridharan*, note 3, pp.1208-1209; *Devesh Kapur* and *Pratap Bhanu Mehta*, The Indian Parliament as an Institution of Accountability, Working Paper No. 23, New York: UNRISD, 2006, n.p. as well as *A.G. Noorani*, Comment: Vote of Confidence: Necessary?, Daily Times, 28 July 2008 at: http://archives.dailytimes.com.pk/editorial/28-Jul-2008/comment-vote-of-confidence-necessary-a-g-noorani and *Baijayant Panda*, Choosing Between Reform and Referendum, The Hindu, 11 January 2012, at: http://www.thehindu.com/opinion/op-ed/choosing-between-reform-and-referendum/article2790919.ece .

10 See *Kapur* and *Mehta*, note 6, n.p..

11 One notable exception is *Harihar Swarup*, Constitution Review Commission – No Confidence Motion?, The Hindu Business Line, 3 May 2002, at: http://www.thehindubusinessline.com/2002/0

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While changes in government are sometimes not seen as a negative feature of democracy, but as quite the opposite[12], there is, of course, a downside to all-too-frequent government turnover. Some of the potential effects of this type of instability include:

- the possibility of a decline in support for electoral democracy as a whole, or at least for its main actors (politicians and parties),
- greater insecurity for all actors engaged in business and economic development, including citizens, who might put money away into savings rather than invest it because of the constantly changing governments and the ensuing planning insecurity,[13]
- and a decline in politicians' responsiveness to medium- and long-term issues and problems because their time horizons become increasingly shorter, and they focus more on personal and short-term electoral gains than structural problems which take time to resolve.[14]

There is some empirical evidence suggesting that all three phenomena have become problematic for India as a whole and its regions (especially U.P. and Bihar), albeit in varying degrees. Overall, therefore, dissatisfaction with short durations of Chief Ministerships and, more importantly, with the prospect of continued coalition government and the threat of excessive changes in the office of the Prime Minister at the national level, seems somewhat warranted on substantive grounds, if only because of India's history of frequent government turnover in the late 1980s and during the 1990s. Before discussing the Indian case and the suggested reform towards a "constructive vote of no confidence" in greater detail, it may be instructive to review some of the findings from the comparative study of rules on no confidence motions and their relationship with government stability to gain a clearer understanding as to how unique or comparable the Indian case is in the larger universe of parliamentary democracies grappling with this institutional design feature and with early government termination.

5/03/stories/2002050300200900.htm . However, Swarup seems to confuse the German *Vertrauensfrage* (Article 68) and its consequences with the *Misstrauensvotum* (Article 67) when discussing the merits and demerits of the proposal in the Indian context, which leads him to dismiss the German design too easily as a possible model for India.

12 See for example *Tatu Vanhanen*, "Why the Authoritarian Experiment Failed?", Paper presented at the Seventh European Conference on Modern South Asian Studies, 7-11 July 1981. Vanhanen argues that regular turnover is a necessary feature of a mature democracy and the lack thereof indicates deficiencies in the democratic process, such as during the period of Congress dominance in India when successive national governments were always formed and run by the Indian National Congress from 1947 until 1977.

13 For a general cross-national study which makes this point, see *Alessandro Alesina* et al., Political Instability and Economic Growth, Journal of Economic Growth, 1 (1996), pp.189.

14 Instead of many, see the arguments made in *Sridharan*, note 3, p. 1200.

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C. The Comparative Debate on Votes of No Confidence Rules

Too much instability certainly poses a problem for any political system. However, some degree of government instability is inherent in all parliamentary forms of democracy. Despite the obvious differences between India's and various other countries' systems of government and their respective historical political experiences, it seems prudent to consider the broader debate about different types of "votes of confidence" and their respective contexts and practical importance in different countries.[15] As more European countries have adopted the "constructive vote of no confidence" along the German model (the non-European examples now include Thailand, Georgia and Papua New Guinea), a growing literature has emerged over the decades on this particular aspect of constitutional design in parliamentary democracies. The extant literature approaches the question of destructive versus constructive votes of no confidence mainly from two angles, depending on the main concern of the respective scholars: the perspective of executive-legislature relations and the question of executive accountability,[16] and that of government stability.[17] It is the latter strand of the literature with which we will concern ourselves here before taking up some insights from the former studies in the discussion of the Indian case later.

At the heart of the issue of government instability lie the fragmentation of party systems in parliamentary democracies and the consequent need for coalition government.[18] The choice of a parliamentary form of government instead of a presidential one, especially in connection with fragmented party systems, comes with practical difficulties in the form of government instability. Israel and Italy are extreme cases of parliamentary systems with high government turnover. Germany has also experienced successful and unsuccessful attempts at ousting governments at the federal and regional levels, but far fewer. On the other hand, government instability has not led to a collapse of governance in Italy. Any stock-

15 For a general rationale for inter-regional comparison of institutional structures, see *Philipp Dann*, Federal Democracy in India and the European Union: Towards Transcontinental Comparison of Constitutional Law, Verfassung und Recht in Übersee/Law and Politics in Africa, Asia and Latin America 44 (2011), pp.161-162.

16 See for example *Torbjörn Bergman* et al., Democratic Delegation and Accountability: Cross-national Patterns, in: Kaare Strøm, Wolfgang Müller and Torbjörn Bergman (eds), Delegation and Accountability in Parliamentary Democracies, Oxford 2003, pp.152-157; *Michael Laver*, Legislatures and Parliaments in Comparative Context, in: Donald Wittman and Barry Weingast (eds), The Oxford Handbook of Political Economy, Oxford 2008, p.3.

17 *Philipp Harfst*, Regierungsstabilität in Osteuropa: Der Einfluss von Parlamenten und Parteien, WZB Discussion Paper, No. FS III 01-204, pp.11-12; *Laron K. Williams*, Unsuccessful Success? Failed No-Confidence Motions, Competence Signals and Electoral Support, Comparative Political Studies 44 (2011), pp.1474-1499; *Reuven Hazan*, The Evolution of the Constructive Vote of No Confidence and Its Political Consequences, March 2014 (unpublished manuscript provided by the author).

18 For an explanatory model and a study of the mutually reinforcing dynamics of party system fragmentation and coalition government at the center and in the States in India, see *Adam Ziegfeld*, Coalition Government and Party System Change: Explaining the Rise of Regional Parties in India, Comparative Politics 45 (2012), pp.69-87.

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taking of parliamentary democracies must view both advantages and disadvantages of the regular ("destructive") and the constructive design of motions of confidence in constitutional design. Relatively stable support for government-sponsored legislation, achieved by institutions which guarantee stable majorities in the legislature in parliamentary systems, is sometimes offset by the lack of a strict distinction between legislative and executive branches of government, lowering the level of control on government. One control mechanism (or obstacle, in the view of some) over the activities of the executive is the very existence of the same coalition governments, within which compromise among several constituent elements must be sought to ensure support in the legislature. This makes coalitions both a bane and a boon for parliamentary democracy at the same time.

The comparative cross-national study of no-confidence motions has found that very few no-confidence motions, whether in their constructive or destructive form, are actually successful in ousting governments when compared to the total number introduced over long periods of time in advanced parliamentary democracies.[19] Differentiating destructive from constructive votes of no confidence, but comparing only a smaller sample of countries over time, Hazan has found that systems with constructive votes of no confidence have fewer such motions introduced over time than those with destructive motion designs, but once introduced, the motions in systems with the "constructive" design are more likely to pass.[20] On the other hand, the change from a regular (destructive) vote design to a more recent semi-constructive vote of no confidence in Israel seems to have increased the incidence of motions introduced instead of decreasing the number, unlike what had been expected.[21]

It is thus clear that the conclusions from this literature alone call into question the alarmism about government instability resulting from the frequent introduction of motions of no confidence in their varied forms, as well as the notion that the introduction of a constructive vote of no confidence alone will help to stabilize political processes and governments. While in India the debate over government instability has a long history, and the proposals and actual changes over the years have been varied, this has not ended the debate over the merits of an introduction of the constructive vote of no confidence. Drawing on the insights from the various strands of comparative literature and on the context within which Indian politics and government operate, we will now examine the Indian debate in a comparative context.

D. The Indian Debate From a Comparative Perspective

The reform proposals dealing with changing the Indian regulations regarding the motions of confidence and no confidence are part of a larger debate over measures to curb government instability in India. In an earlier wave of reforms, for example, the Indian parliament in

19 See the results in *Williams*, note 15, p.1474.

20 See *Hazan*, note 15, pp.7-9.

21 *Hazan*, note 15, p.15.

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1985 passed the Constitution of India (52nd Amendment) Act, which introduced the Tenth Schedule of the Constitution that covers the grounds for disqualification of members of the Union and the State legislatures.[22] This law, which was updated in 2003 with the Constitution of India (91st Amendment) Act[23], became generally referred to as the "Anti-defection Law", significantly brought down party-switching trends in the legislatures during legislative terms and thereby contributed somewhat to the stabilization of legislative party politics. On the other hand, this same law is seen as a major contributing factor to the proliferation of small new parties led by former members of older and larger parties. This has helped to erode the bonds between parties and voters even more and thus aided the fragmentation and deinstitutionalization of parties and party systems in India. It is within this context of interactions between rules and actual dynamics of politics that the proposal for a constructive vote of no confidence ought to be analyzed.

When focusing on government turnover and early elections to the Lok Sabha during the 1990s, it is difficult to simply dismiss the concerns of those commentators who think of the 1990s in Indian politics as a period of great, perhaps even excessive instability out of hand. The underlying factors which caused the Indian political system and party competition to be much less stable during the 1990s would, of course, have been much less of a problem during that time period, had it not been for the instrument of the "destructive" vote of no confidence. It was this institutional feature, which enabled coalition partners to oust sitting Prime Ministers by voting or threatening to vote against them in an actual or potential vote of confidence.

On the other hand, one could just as easily re-interpret the instability which was at the heart of the concern of observers of Indian politics during the 1990s as merely a much needed infusion of dynamism into a previously ossified political system which had catered largely to an elite class of political operators connected to the Congress Party until the 1980s. While there are good reasons to be concerned with instability, there are more convincing arguments against changing India's laws regarding the motions of confidence as contained in the Rules of Procedure and Conduct of Business of the Lok Sabha from the current system to either a combination of the same or a different version of the vote of confidence with the constructive vote of no confidence, or to replace the old system altogether with only the constructive vote of no confidence. We will now examine each of these arguments in turn.

22 See *Clemens Spiess* and *Malte Pehl*, Floor Crossing and Nascent Democracies – A Neglected Aspect of Electoral Systems? The Current South African Debate in the Light of the Indian Experience, Verfassung und Recht in Übersee/Law and Politics in Africa, Asia and Latin America 37 (2004), p.199 for the background to this law and for a study of its inadvertent effect on party system institutionalization, see *Csaba Nikolenyi*, Recognition Rules, Party Labels and the Number of Parties in India: A Research Note, Party Politics 14 (2008), pp.211-222.

23 The 91st Amendment eliminated the ability of legislators to defect in bulk numbers (at least one third of a legislative party), a provision which had functioned as an exception to the anti-defection rules under the 1985 law for those legislators not to forfeit their legislative seats.

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I. The Motions of Confidence and their Institutional Context

The constitutional rules or subordinate legislation governing the removal from office of a government (the Chancellor in the German, the Council of Ministers in the Indian case), need to be examined in their institutional context. Constitutional rules on investiture of the Federal Chancellor in Germany are very different compared to that of the Indian Prime Minister. In Germany, for example, a formal vote of investiture takes place in accordance with Article 63 of the Basic Law, which stipulates very clear and detailed procedures for the election of the Federal Chancellor in the Bundestag. In India, on the other hand, the President appoints the Prime Minister, who must fulfil the requirements laid out in Articles 75 and 84 of the Indian Constitution and who, by convention, then usually is given one month by the President to prove his majority support in the Lok Sabha, if need be by way of forming a minority government with support from outside the formal coalition of legislative parties, from which the Ministers in the Council of Ministers are drawn. By convention, the President of India nominates a Member of the Lok Sabha who the President believes can muster the support of the majority in the Lok Sabha (usually the leader of the largest legislative party). But this need not always be the leader of the largest party when no party has a clear majority, for example. It is in the context of the indirect form of investiture of the Indian Prime Minister that the motion of confidence procedure acquires is most practical significance, not in the ousting of governments. Since in Germany the investiture of the head of government is much more personalized and formal, and since the appointment follows the vote of investiture and not the other way around as in India, it seems not entirely inappropriate that the procedure for voting no confidence in a sitting Chancellor should be more difficult than that in India, where conventions govern this process, which are more ambiguous and leave more room for political maneuvering after the Prime Minister is appointed by the President. Another argument against changing the motion of confidence procedures in India by introducing the constructive vote of no confidence has to do with which of the two procedures available actually generates the instability in the system.

II. Reforming the Vote of Confidence or No Confidence?

As was mentioned above, the three times a sitting Indian Prime Minister was voted out of office, this was accomplished by way of the "vote of confidence" after coalition partners had withdrawn their support from the Prime Minister's coalition government and not by way of the "vote of no confidence", which much of the discussion about institutional reform in India has revolved around. Therefore, even if India had had a constructive vote of no confidence procedure in place alongside the unaltered vote of confidence procedure, this would not have prevented the fall of those three governments due to failed votes of confidence. If advocates of reform should be concerned with anything, it would therefore seem to have to be the motion of confidence procedure which would need to be modified or at least its application restricted. In Germany's Basic Law, for example, it is within the Fed-

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eral Chancellor's discretion to continue governing in a minority government after a failed confidence motion by employing the procedure of a legislative state of emergency according to Article 81. Alternatively, he could ask the President for his dismissal, which could either lead to the election of a new Federal Chancellor by the same legislature or could trigger early elections according to Article 68 (I) on the advice of the Chancellor and the decision by the Federal President.[24] This is similar to the structure of Article 54 of the Weimar Constitution.

It is conceivable to introduce language into the Rules of Procedure for the Lok Sabha which mirror this procedure as designed in Germany. This would clarify the legal consequences of a failed vote of confidence in the legislature and give the Prime Minister more discretion and time to search for an alternative to early elections. To accomplish the type of stability which the proponents of a change toward a constructive vote of no confidence are aiming at, therefore, the latter would have to be accompanied by a change in the procedural rule for the vote of confidence. All of these discussions, however, assume that such a change towards placing greater restrictions on these procedures is necessary or desirable. The following sections will demonstrate and argue that neither is the case in India today.

III. The Constructive Vote of No Confidence – A Necessary Condition for Stability?

As was argued earlier already, some scholars have observed for the time period of Congress Party dominance that India was suffering from anything but too much instability and government turnover.[25] Nonetheless, the late 1980s and the 1990s certainly saw a great deal more instability through the frequent introduction of such motions and government turnover due to early termination of legislative periods, than the Congress era of one-party dominance, which came to a definitive end during that time.[26]

24 See *Dieter C. Umbach*, Artikel 68, in: Dieter C. Umbach and Thomas Clemens (eds.), Grundgesetz: Mitarbeiterkommentar und Handbuch, Band II, Heidelberg 2002, pp.526-527.

25 See *Vanhanen*, note 12.

26 See *Clemens Spiess*, Democracy and Party Systems in Developing Countries: A comparative study of India and South Africa, London 2008, for an excellent discussion of the advantages and disadvantages of one-party dominance in developing countries.

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Table 2: Motions of Confidence and No Confidence in the Lok Sabha since 1989

Lok Sabha	Period	No Confidence Motions	Confidence Motions
Ninth	02/12/89 – 13/03/90	0	3
Tenth	20/06/91 – 10/05/96	3	1
Eleventh	15/05/96 – 04/12/97	0	4
Twelfth	19/03/98 – 26/04/99	0	2
Thirteenth	10/10/99 – 06/02/2004	1	0
Fourteenth	17/05/2004 – 08/05/2009	0	1
Fifteenth	18/05/2009 – 18/05/2014	1	0

Source: Lok Sabha Secretariat, note 3, p.736 and Lok Sabha Debates archive at: http://164.100.47.132/LssNew/debates/DebateArchive.aspx (accessed on 17 July 2015).

Given that out of these admittedly comparatively many motions, only three have resulted in governments being ousted over the last 25 years in India, it seems that the threat of government instability due to actual motions of confidence or no confidence is somewhat exaggerated. While every motion certainly created political difficulties and while changes to the procedures might have the desirable effect of discouraging even the mere introduction of such motions, at least in terms of actual government turnover, these motions have been comparatively unsuccessful.[27]

On the other hand, from the discussion of the German case within the Indian debate one might get the impression that the constructive vote of no confidence or the vote of no confidence had been used far fewer times and with much less destabilizing effect than the comparable procedures in question in India. However, when comparing the actually successful cases in which votes of confidence or votes of no confidence were used in Germany to oust governments, the numbers are quite comparable. Of the six confidence motions in Germany's post-war history, only those in the Chancellors Brandt (1972), Kohl (1982) and Schröder (2005) failed, with the latter two likely intended to fail in order to trigger early elections desired by the government. Conversely, of the only two constructive votes of no confidence, one was successful against Chancellor Schmidt in 1982. Technically speaking, therefore, Germany has seen more early government terminations and early elections triggered due to confidence and no confidence votes which were actually held than India has seen since Independence. This is of course not to deny the fact that the mere threat of a vote against the Prime Minister by defecting coalition partners played a role in the three cases when Prime Ministers resigned in the 1990s before actual votes of confidence or no confidence were called.

While the threat of government instability due to actual confidence-related motions in India thus seems somewhat overstated, the political dynamism or instability has certainly

27 This is in line with the findings of *Williams*, note 17, p. 1474.

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increased since the 1980s at the national level. That, however, at the heart of it may have more to do with the lack of an institutionalization of parties and party systems,[28] with corruption and graft in politics as well as with an anti-incumbency effect in elections,[29] which leads politicians to have significantly shortened time horizons and creates a foundation for a system rife with publicized scandal and contentious politics. It seems that even the BJP-led government realized this since the main change which was implemented from the recommendations of the National Commission to Review the Working of the Constitution in 2003 was the reform of the anti-defection provisions in the Indian Constitution to prevent party-switching during legislative periods, but not the introduction of the constructive vote of no confidence which had also been recommended. Given that the threat from the current rules on confidence motions therefore seems overstated and the suggested institutional changes insufficient to address instability in India's national politics, would it even be desirable to attempt a comprehensive overhaul of the rules both of confidence and no confidence towards greater obstacles to voting a government out of office, if that were really the cause of instability and if a change promised greater stability?

IV. The Constructive Vote of No Confidence in India – Greater Stability without Accountability?

The debate about rearranging the current Indian system suggests that the instability is somehow related to the rules governing "votes of confidence" or that it can be best remedied by institutional change towards the German model. The comparative stability of post-war West Germany, especially when contrasted with the situation during the Weimar Republic, is cited as evidence for the effectiveness of this mechanism. When comparing the German and the Indian cases in regard to factors influencing governmental stability, more differences than commonalities spring to mind. Germany's legislatures at all levels are far less fragmented and governing coalitions seldom have more than two or three constituent parties. At the same time, compared to India before the prohibition of legislative party-switching, party discipline of German MPs has been very high. This is partly due to the virtual impossibility of being elected to a legislature without having the support of a competitive party under German electoral rules. Issue-voting among voters and programmatic orientations of legislators are also far more important since organizationally even smaller parties are far stronger and more independent as fora for debate than many parties in India. Taken together with the constructive vote of no confidence, these factors have led to great governmental stability. Nevertheless, it has still been legally and practically possible to vote a government out of office over policy or personnel issues, or to at least effectively threaten the executive with such a move.

28 See *Joachim Betz*, Die Institutionalisierung von Parteien und die Konsolidierung des Parteiensystems in Indien, Working Papers – Global and Area Studies (No. 10), Hamburg 2005, p.29.

29 See *Yogesh Uppal*, The Disadvantaged Incumbents: Estimating incumbency effects in Indian State legislatures, Public Choice 138 (2009), p.25.

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Since the socio-political context is so different from that of India, would a change towards a constructive vote of no confidence at Union and State levels be advisable? Fragmentation of the legislature makes the situation entirely unlike those of most European parliamentary democracies. India's Lok Sabha is composed of dozens of legislative parties (38 in 2009, for example) and a number of independent candidates. Even though there are two main parties around which smaller parties mostly coalesce (the Indian National Congress or INC and the Bharatiya Janata Party or BJP), even when examining the parliamentary party landscape from the perspective of seat strengths, i.e. by weighting the number of parties by their respective size in terms of seats, India's is much more fragmented than most European legislatures.[30]

Given the higher degree of fragmentation of Indian politics (one of the effects of which this change would be meant to curb), restricting accountability by introducing a constructive vote of no confidence in place of today's rules would inevitably blunt the only weapon a legislature has in a parliamentary democracy with which to threaten the executive. To demonstrate this, one can employ a counterfactual example. If in 2009, just after the elections to the fifteenth Lok Sabha had been held, a party from the United Progressive Alliance (UPA) coalition government had wanted to leave the coalition and to bring down the government of Prime Minister Singh, under a constructive vote of no confidence procedure (and assuming that a vote of confidence had not been assumed to be necessary or perhaps even available under this hypothetical scenario) a majority of the members of the Lok Sabha would have had to vote for an alternative Prime Minister. Given that there were 21 large and small opposition parties plus a number of independent legislators, which would have had to agree on a single alternative to the sitting Prime Minister, it would, in practical terms, have been all but impossible to oust the government under the constructive vote of no confidence in such a situation. This is more so the case, given that several parties in opposition at the time had never been in a coalition with each other directly (and many not even indirectly as part of a coalition supporting a minority government) and would have found it difficult to overcome personality and ideological differences as obstacles to uniting behind an alternative to the sitting Prime Minister. Effectively, therefore, voting a Prime Minister out of office would become impossible, since the opposition and some elements of the coalition would find it extremely difficult to agree on the necessary alternative. It is precisely this ability of a legislature to vote a government out of office, however, which is the

30 The effective number of parties N (calculated based on Laakso and Taagepera's equation),

$$N = \frac{1}{\sum_{i=1}^{n} p_i^2}$$

where p_i indicates the respective seat or vote share of party i) remained around 1.8 (measured by seats; 4.3 when measured on the basis of votes) during the 1950s and early 1960s in the lower house of the national legislature, the *Lok Sabha*. In the last three Lok Sabhas, the figures based on seat shares stood at 6.5 (2004), 5 (2009) and 3.5 (2014), respectively. This indicates an increase in the fragmentation based on seat shares of parties since the 1960s.

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very essence of parliamentary democracy itself.[31] The result could be a situation where the current Prime Minister does no longer have the support of a majority in the Lok Sabha, but neither does an alternative candidate for the post.

In addition to this practical obstacle to effective government accountability through the legislature's ability to vote no confidence in a government and thereby effect government turnover, intransparency in politics would increase even further under more stringent rules on confidence and no confidence motions, because protracted negotiations over alternative candidates to replace the current head of government would necessarily have to be conducted behind closed doors between leaders of the opposition and leaders of potential defecting legislative parties. One might hope that the negotiations would involve issues of policy rather than merely issues of allocation of offices in an alternative government coalition after a possible constructive vote of no confidence under the suggested new rules. However, given how negotiations of the members of pre-electoral coalitions with additional coalition partners usually develop when new governments are formed after national elections, namely mainly along issues of pork barrel concerns and office allocations, that hope may be misplaced as far as these behind-the-scenes negotiations during a legislative term are concerned. This protracted process of determining the "price" for the defection of some coalition parties to an alternative government coalition before a constructive vote of no confidence could make governing increasingly difficult for the sitting government coalition since some of its members would be actively negotiating over a possible alternative Prime Minister while officially still supporting the sitting one. It could also further undermine the legitimacy of democracy, which so far has enjoyed robust support in India.[32]

E. Conclusion: Institutional Change vs. Process Learning

There are good reasons to view the last 25 years of politics in India as the most dynamic since the Independence movement under British colonial rule and to view the 1990s with its more frequent turnover in the office of the Prime Minister as the least stable in terms of government. The rise of backward caste and class groups, the proliferation of new parties and the policy reforms at the national and subnational levels, the decentralization of government to regional and local levels and the public debates about corruption and criminalization in Indian politics are all testament to this new dynamism. This has come at a price, namely greater turnover in governments both between and during legislative periods as well as the introduction of unsavory elements into politics and the rise of controversial political figures to power at various levels of government, who can blackmail Prime Ministers politically for their personal or their respective parties' advantage.

31 See *Laver*, note 16.

32 See *Subrata K. Mitra* and *V.B. Singh*, When Rebels Become Stakeholders – Democracy, Agency and Social Change in India, New Delhi 2009, pp.13-14.

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Nonetheless, the advocates of institutional reform towards a constructive vote of no confidence, despite their laudable motives of wanting to make government and politics more stable, overlook the limited usefulness of this proposed change, its very real drawbacks and the fact that the way the rules are currently written is not the main cause of government instability, but merely an institutional valve, albeit an important one, through which at times this instability has found its expression. As laid out earlier, the most important argument against an adoption of the German model in India may be that such a design would ensure the virtual impossibility of voting an alternative to a sitting Prime Minister (or, more accurately, a sitting Council of Ministers) into office in the face to the high degree of fragmentation of parties in the Lok Sabha. Lastly, at least at the national level the instability of the 1990s seems to turn out to be an episodic phenomenon of the past. In fact, all three Lok Sabhas since 1999 were able to complete their full term as were the Prime Ministers who led the government during those terms. This points to an important, but often overlooked, aspect of this phenomenon: the ability of the governing party, in recent years, to recruit new coalition partners in the event current members of the governing coalition threaten to leave and topple the sitting governments. In 2008, for example, the Congress-led government of Prime Minister Manmohan Singh was ultimately able to recruit new partners in place of the Communist Parties, which had supported the government, but left the coalition over the Indo-American nuclear agreement and thereafter win a vote of confidence triggered by the departure of the Communist Party of India-Marxist-led Left Front parties. It is therefore possible that votes of confidence and no confidence will continue to be much more rare (as they have been over the last years since 2000) and much more manageable than they were in the late 1990s due to the learning of leaders to navigate the complex process dynamics of coalition government.

Another important reason for not further curtailing the practical ability of the legislature to exercise control over the executive by increasing the institutional threshold for doing so from a destructive to a constructive vote of no confidence is the fact that the practical power of legislators has already been severely curtailed over the last 30 years. The introduction and amendment of the Tenth Schedule to the Indian Constitution in 1985 and 2003, respectively, has already reduced the ability of individual legislators to voice dissent over policy issues within government coalitions (and outside of them) in defiance of their parties' respective leadership.[33] Combined with the fact that the Lok Sabha has a relatively short duration of its annual sessions compared to many other legislatures (e.g. 67 session days in 2014, many of which were half days or less, compared to the German Bundestag's 100 session days for the same year)[34], this has led to considerably less debate and critical legislative oversight over policy issues and to the rushing through of even the most important

33 See for example *Kartik Khanna* and *Dhvani Shah*, The Anti-Defection Law: A Death Knell for Parliamentary Dissent?, NJUS Law Review 103 (2012), pp.103-127.

34 Figures from the *Sitzungskalender 2014* (www.bundestag.de) and from productivity charts compiled by PRS Legislative Research for the Lok Sabha.

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measures, such as the annual budget bills, in less than two days. Eliminating one more instrument of parliamentary control over the executive by making the voting out of office of a sitting Prime Minister all but practically impossible during a legislative term would only act to reinforce the danger of reducing the Lok Sabha to a talking shop which serves mainly as a place for public acclamation of party leaders and as a forum for populist grandstanding of outsized political egos rather than as an effective instrument of oversight and alternative policy formulation.

The real battlefields for institutional reform, then, as has been pointed out before, lie in strengthening parties and intra-party democracy to further them as fora for debate and transparent recruitment of qualified personnel by a Party Law (the Indian equivalent of the German *Parteiengesetz*),[35] curbing the increasing criminalization of politics in some regions and introducing a formal vote of investiture for heads of government in order to curb the possibility of a perceived arbitrariness of their selection by the President. As for opting for the constructive vote of no confidence as a quick fix in India, thereby rendering the executive virtually immune from a threat on the part of the legislature in practical terms, the lesson seems patently clear: Do not touch with a ten-foot pole!

35 See *Subrata K. Mitra*, Die Parteiinstitution in Indien, in: Dimitris Tsatsos (ed.), 30 Jahre Parteiengesetz in Deutschland - Die Parteiinstitution im internationalen Vergleich, Baden-Baden 2002, pp.271-300.

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