

The Prime Minister, the Ministers and Civil Servants

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The constitutional arrangement of how the Union Executive will function is given very clearly in Part V, Chapter 1 of the Constitution. Under Article 53 the executive power of the Union vests in the President and is exercised through officers subordinate to him. However, in taking executive decisions, under Article 74 the President is bound by the aid and advice of the Prime Minister and Council of Ministers. For the sake of the convenient conduct of business the President frames rules under Article 77 which allocate among ministers portfolios and ministries. The rules further specify how civil servants will conduct the business of government, in which matters different ministries will consult each other, how will conflict be resolved and which are the matters which shall require the orders of the Council of Ministers.

The new Prime Minister started by holding a cabinet meeting. The Prime Minister also decided to separately meet Secretaries to Government of India. The ministers were not invited to this meeting. The Prime Minister heard the Secretaries and thereafter advised them to speed up the work of government, take quick decisions and be assured that they would be fully supported for their bona fide actions. Under the Westminster model of government policy formulation and specific decisions on important matters is the responsibility of the ministers in which the civil servants are guaranteed an environment of political neutrality in which they can work without fear or favour. That is the model that we have adopted

The question arises whether the ministers should or should not have been invited for the Prime Minister's meeting with the Secretaries. Under the Business Allocation Rules the business of a ministry or department is assigned to a minister and the secretary of the department is required to interact with the minister, give him advice, seek his directions and then, after implementation of policy, report compliance. The Secretary is also personally responsible for ensuring that the Rules of Business are followed. In case a minister insists on deviation the Secretary must resist this, if necessary bring the matter to the notice of the Cabinet Secretary and through him to the Prime Minister and then await orders. In all these circumstances, however, the integral relationship between the Minister and Secretary remains unchanged. That is why if the Prime Minister is to interact with the Secretaries and give them directions it is but mete and proper that this be done in the presence of or with the knowledge of the Ministers. If the Ministers are kept out of the loop a situation may arise where a Secretary does something in pursuance of what he feels are the directions of the Prime Minister and in doing so he may incur the wrath of the Minister under whom he works. This definitely harms administrative harmony. In my view the meeting with the Secretaries should have been conducted with the Ministers also being present so that there would be no ambiguity in the directions given to the officers by the Prime Minister. One hopes that the Prime Minister will follow the healthy practice of keeping the Ministers in the loop so that they become his active partners in providing good government.

The Prime Minister has said that the Secretaries must work without fear or favour. He must equally direct his Ministers that they must give the Secretaries complete freedom to do their work, subject to the directions of the Ministers and while it is they who will take a final decision in any matter, the Secretary must be encouraged to give his opinion and his advice freely and in an

environment in which contrary advice does not sour the relationship between the Minister and the Secretary. It is for the Prime Minister and the Council of Ministers to create that environment.

The Civil Service today is in absolute shambles. It started with Indira Gandhi giving a call for a committed Civil Service. Of course the Civil Service must be committed, to the nation, to the welfare of the people, to the speedy implementation of the decisions of government, to administrative reforms so that the system functions better and to keeping the Ministers fully informed about the consequences of implementing a particular policy. In turn the civil servants must be fully protected against harassment, provided that their actions are bona fide. An error of judgement must be seen as such, with corrective measures being applied to minimise the effect of such error. However, provided that there are neither mala fides nor criminality in the action of the civil servants, he must be called to account only by his own superiors and by the Ministers. He should never be accountable to an outside agency.

The Delhi Special Police Establishment, erroneously called the Central Bureau of Investigation (CBI) has, over the years, set itself up as a superior executive body which calls into question the executive actions of civil servants. CBI is not an Ombudsman of the Swedish model and its jurisdiction has to be restricted to what it is, a police force. The police is entirely subject to the provisions of the Code of Criminal Procedure, in particular Chapter XII in the matter of registration of offences, their investigation and their prosecution. In this behalf the law gives the power to the police and no executive authority can interfere with investigation. That applies to CBI in its police avatar and to that extent it has and must have full autonomy. This, however, cannot extend to the CBI holding a preliminary enquiry as a substitute for or a prelude to the FIR. No police force, including CBI, has any jurisdiction in a criminal matter before a FIR is recorded and in the matter of a so called P.E., CBI is functus officio. CBI goes much further and it has now started summoning senior officers and started questioning them on their executive decisions. A Secretary to government is not required to explain his decisions or his actions except to the Minister, the Cabinet Secretary or the Prime Minister. If there is criminality in his actions let CBI register a FIR and then proceed according to law. Unless the Prime Minister makes it clear that officers will be accountable only to their own superiors and that CBI has no executive functions whatsoever except as a police force, the present atmosphere of fear will not go away and civil servants will always hesitate to take decisions. For this purpose let government make it clear even to the Supreme Court that the autonomy of CBI extends only to the registration of offences and their investigation. There can be no other functions assigned to CBI whereby it sits in judgement over senior officers. What is more, it is about time government made use of Entry 8 of List 1 of the Seventh Schedule, enact a comprehensive law to cover CBI and then make CBI accountable for functioning according to law. That will remove all ambiguity.
