

Constitutional Role of The Civil Service

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The Constitution of India posits separation of powers between the Executive, the Legislature and the Judiciary. In the United States this separation is complete in that the Executive is totally divorced from the Legislature and members of the Executive Government who form the cabinet of the President are constitutionally debarred from being members of the Legislature. In the Westminster model of democracy that we follow the Executive and the Legislature are closely intertwined in that the Council of Ministers, through whose aid and advice the President at the Centre and the Governors in the States act, is constitutionally accountable to the Legislature under Article 75 in the case of the Centre and Article 164 in the case of the States. What is more, the same two Articles also have a provision that a minister who for any period of six consecutive months is not a Member of Parliament or the State Legislature will cease to be a minister. In other words, members of the Council of Ministers have to be Members of the Legislature because they are collectively responsible to the Legislature. If the Legislature finds that they no longer enjoy its confidence then by a vote of no confidence Parliament or the State Legislature, as the case may be, can defeat the government and the Council has to resign. This means that the Prime Minister or the Chief Minister and the Council of Ministers have to be drawn from the party or coalition of parties which has a majority in the House and to that extent the Executive through the Council of Ministers can determine how the Legislature will enact laws and clear the budget. This does not mean that the Legislature is not totally independent within its own sphere, but it does mean that provided it enjoys a majority the Executive can determine both the legislative agenda and the legislative outcome.

The Executive powers of the Union vest in the President under Article 53 and in a State in the Governor under Article 154. This is where under our Constitution a dichotomy is created between the elected element of the Executive, the Council of Ministers and the appointed permanent members of the Executive, that is, officers appointed by the President or Governor as per rules. In the exercise of his executive functions the President is bound to act according to the aid and advice of his Council of Ministers under Article 74 and in the case of States the Governor is similarly bound by Article 163. In other words, it is the ministers who will determine policy and advise the President or Governor, as the case may be, on how to act, which these functionaries are constitutionally bound to do. However, in actual implementation of the decisions taken by the President or the Governor under Articles 53, 74, 154 and 163 this would be done by officers appointed by the President or the Governor as the case may be. Policy then falls within the realm of the elected ministers and implementation in the domain of officers appointed by the President or the Governor. The Executive, therefore, is constitutionally divided into two segments, elected and appointed and both have a constitutional position of their own.

The Constitution provides for the President under Article 77 and the Governor under Article 166 to frame rules for the conduct of government business. Allocation of business to different ministers and, therefore, to different ministries or departments is done under the Business Allocation Rules and the powers, functions and relationships between ministers and their officers are given in the Rules of Business of the Executive Government. These are rules framed under the Constitution and, therefore, have the force of law and give the appointed officer certain independent functions and powers for which they are accountable but not subordinate. Under normal circumstances this division of functions of framing policy, which is bound to be coloured by the ideology of the party in power and the implementation of policy, which has to be impartial and even handed form two very important pillars of the Constitution. They ensure that government at all times is even handed and, therefore, its actions are in consonance with the Preamble to the Constitution which requires the State to secure to all its citizens social, economic and political justice. If implementation were partisan then there would be no justice and

whereas a politicised Civil Service would probably be partisan in implementation, an apolitical Civil Service would ensure that all citizens are treated on an equal footing. In no other Constitution that I know of does the permanent Executive, as represented by the Civil Service, find a specific and prominent mention in the Constitution as one of the two wings of the Executive. In the United States Constitution, for example, under Article II, section 2 the President, with the advice and consent of the Senate, can appoint officers, but the powers and functions of these officers or the method of their recruitment is not mandated by the Constitution and, therefore, they have no independent constitutional existence or authority. In India, on the other hand, through Part XIV of the Constitution there is provision for creation of regular Civil Services which have, under Article 311, constitutional protection against arbitrary punishment or dismissal. This protection is not provided in any other Constitution. Under Article 312, despite the fact that India is a federal polity, there is provision for the constitution of All India Services, initially the Indian Administrative Service and the Indian Police Service, but subsequently also the Indian Forest Service, which are under the rule making control of the Central Government, whose officers are appointed by the President, such officers being assigned to a State Cadre but liable to service anywhere, with the ultimate disciplinary authority being the Central Government and the President, which means that they have the freedom to resist arbitrary actions of a State Government. The officers of the All India Services hold all the senior designated posts in both the States and at the Centre, which makes this unique in that a federally constituted service administers to the needs of both the Centre and the States. This gives an additional protection to All India Service officers. The objective of having this provision in the Constitution was to create services which, because they have security of tenure, can perform their dual role of advising the Council of Ministers without fear or favour and be totally impartial in implementation of policy because they are immunised from the pressure exerted by local leaders whose views are narrow and parochial.

Further to this under Chapter II of Part XIV of the Constitution there is a provision under Article 315 to set up independent Public Service Commissions at the Centre and in the States which would be responsible for selecting officers for the All India and the State Services. Under Article 316 of the Constitution the procedure for the appointment of the members of the Union or State Public Service Commission is laid down. Under Article 317 a member of a State Commission cannot be removed from office by the Governor because this power vests in the President, who may exercise it only after charges against the Chairman or a member of a Public Service Commission are referred to the Supreme Court. Action may be taken only after the Supreme Court finds the charges proved. Under Article 319 a member of a Public Service Commission may not hold an office under government after retirement, which means that on the one hand he is protected against arbitrary dismissal and on the other hand he cannot be induced to do favours because government cannot offer him a post retirement job. The effort was to create such an independent body for selection of civil servants that it could act objectively and without fear or favour. In initial selection in tenure, in protection against arbitrary action the Civil Services in India enjoy a position which no other Civil Service in the world does.

Forming an independent organ within the system, constitutionally protected against arbitrariness, the Civil Service is expected to act totally impartially and honestly. Up to 1967 this worked well, but in that year politicians found that though they did not succeed at the polls, they could still negate the results of an election by purchasing members of the Legislature. This happened quite shamelessly in States such as Madhya Pradesh and Haryana, where wholesale bribery of the Members of the Legislature caused existing governments to fall and new united front governments to be formed with a coterie of corrupt Members of Legislature. Power became an end in itself rather than a means of serving the people.

Once power became purchasable one needed money to ensure continuous and repetitive purchase. This would not be possible unless misuse of authority enabled the politicians to earn funds

dishonestly and this resulted in a wholesale corrupting of the system. To ensure that funds were collected this way it was necessary to have a pliant Civil Service and the politicians single mindedly tried to destroy Civil Service morale by sidelining honest officers and promoting the unscrupulous who were prepared to go along with the nefarious money collecting activities of the politicians. Soon a stage came where the corrupt officers and the politicians formed a nexus in which officers initially aided the politicians to make money illegally, then these very officers became partners in what became a lucrative business and finally many officers actually guided politicians on how to raise even more funds. This nexus has broken the back of the Civil Service and now it is difficult to find an officer who is completely straightforward.

We have to restore élan to the Civil Service and bring it back on the original track of honest work, faithful implementation of policy but in an impartial manner, fearless advice to the politicians and complete impartiality in implementation. This will cause the system itself will improve and the corrupt to be checkmated. Our officers, especially from the All India Services, who have forgotten that they have a constitutional rule and are now working in a completely self-centred, dishonest, biased manner are actually traitors because they have forgotten the undertakings they gave when they joined the Service in which they promised fearlessness, impartiality and honesty in implementation of policy.
