

PAC, JPC, PARLIAMENT AND THE EXECUTIVE

• **By Dr. M.N. Buch**

The scheme of the Indian Constitution is that powers are divided between the Executive under Chapter I of Part 5 for the Union and Chapter I of Part 6 in the case of States, the Legislature under Chapter II of part 5 and Chapter III of Part 6 and the Judiciary under Chapter IV of Part 5 and Chapter V of Part 6 of the Constitution. The powers given for the Union under Part 5 applies mutatis mutandis to the States under Part 6. Government being based on the Westminster model, there is a coming together of the Legislature and the Executive through the Council of Ministers.

The Legislature has well-defined functions given in Chapter II of Part 5 and Chapter III of Part 6. Since the functions of the Legislature, Federal or State, have similarity, I shall refer here to Parliament, with an assumption that more or less the functions of the State Legislatures are similar. The legislative functions and procedures of Parliament are prescribed in Articles 107 to 117 of the Constitution, with Article 118 permitting each House to make its own rules for regulating its business. It is under this Article that Parliament decides on whether it will function as a whole, through special committees or subject-wise committees and, accordingly, we have the Public Accounts Committee, the Estimates Committee, the Select Committees for examination of specific legislative proposals and the departmental committees which oversee various ministries. Presumably a Joint Parliamentary Committee (JPC), would also be constituted under Article 118.

The Public Accounts Committee is required to examine and discuss the audit reports submitted by the Comptroller and Auditor General on how funds voted by the Legislature have been spent by the Executive. Under Articles 53 and 154 of the Constitution the executive power of Union and the States is exercised through officers appointed by the President or the Governor as the case may be. Under the Rules of Business framed under Articles 77 and 166 of the Constitution the business of government is divided between different departments and the departmental minister is the final authority to take decisions on plans, projects and matters of the policy. However, the implementation of policy is the responsibility of the Secretary of the department, his officers and his field organisations. The Minister cannot authenticate an order of government, nor himself spend even a paise of government money. He is responsible for the manner in which his department functions and for this purpose can lay down policy, approve specific projects, monitor and review their implementation and take action against errant officers. However, it is for the officers to ensure compliance with the orders of the minister and if such orders be against the rules, the laws or even the mandate given by the Legislature through the budget, it is the duty of the officer concerned to represent the matter before the minister and if the minister still insists on compliance of an order which requires the approval of the Council of Ministers or consultation with and approval of the Ministry of Finance, the officer must not issue orders in the matter but should refer the case for the Council's orders as per the set procedures. It is for this reason that CAG in his audit report points out the shortcomings of the implementing agencies and it is the officers who are then called to account by the Public Accounts Committee. I am not suggesting that if an officer pleads a minister's orders for any default on his part PAC cannot call upon the minister to explain his stand, but this is not normally done because the minister is accountable to Parliament but not to the Public Accounts Committee. To that extent the Prime Minister's offer to appear before PAC was uncalled for.

The Public Accounts Committee has a limited role in that it has to examine the audited accounts of the department under scrutiny. PAC does not have the jurisdiction to conduct an open ended, roving enquiry and it cannot go beyond the report submitted by CAG. If there are matters beyond a report

which need to be investigated, then some other forum would have to be found for such enquiry. Perhaps the Opposition means exactly this when it calls for constitution of a JPC.

Investigation of issues, especially the conduct of sections of the Executive, calls for an agency which has the capability of conducting such investigation. CAG, of course, is one such agency in matters relating to financial conduct. The police, including Central Police Organisations, is the agency for investigation where there is allegation of criminality. An administrative enquiry by senior officers or a judicial enquiry under the Commission of Enquires Act are two alternative models of enquiry and investigation. Parliament does not have any specific investigating agency, manned by professionals, who can conduct an enquiry. Therefore, the question arises whether a JPC would be the best answer to the various allegations made regarding the allotment of 2G spectrum or the corruption relating to the Commonwealth Games. In any case Parliament is not competent to take over such executive functions as investigation and, therefore, a JPC which wants to investigate in detail would have to select an investigating agency which can do the field work on its behalf. Investigation lies within the domain of the Executive and not the Legislature.

Under Article 75 (3) of the Constitution the Council of Ministers is collectively responsible to the House of the People. This means that Parliament can call the Council to account, though normally this takes the form of a vote of no confidence. In the 2G-spectrum case the Opposition wants a regular investigation rather than a vote of no confidence. Considering the flat rejection of the proposal to set up a JPC, government might like to consider the setting up of a parliamentary committee not to investigate but to oversee the work of the investigating agencies, a task at present being performed by the Supreme Court. Investigation would be done by normal agencies appropriate for this purpose, but this would be done under the supervision of the committee set up by Parliament. It is possible that this solution might meet at least half way what the Opposition is looking for without compromising the government in its opposition to the JPC.
