

THE ROLE OF THE PRIME MINISTER IN A WESTMINSTER DEMOCRACY

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Under the Indian Constitution the executive power of the Union vests in the President and is exercised by him through officers subordinate to him. However, in exercising his executive power the President is bound to act according to the aid and advice rendered to him by the Prime Minister and the Council of Ministers. Under Article 74 it is required that, “There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in exercise of his functions, act in accordance with such advice”. In other words, like the Queen of England, the President reigns but it is the Prime Minister who rules. There can be two exceptions to this. The first is in the matter of appointment of the Prime Minister where the President has to take a decision at his own discretion. Even this discretion is circumscribed by the provisions of Article 75 of the Constitution, sub-clause 3 of which reads, “The Council of Ministers shall be collectively responsible to the House of the People”. This means that if the President whimsically appoints a Prime Minister who does not enjoy the confidence of the House, then he will be voted out by the House and his government will fall. Therefore, in appointing the Prime Minister the President has to ensure that the person selected as the leader of the majority party enjoys the confidence of the House.

The second circumstance where the President may act at his discretion is covered by Article 60 of the Constitution. In the oath prescribed for the President he swears or solemnly affirms that “... will to the best of my ability preserve, protect and defend the Constitution ...” If the Prime Minister and the Council of Ministers advise the President to do something which is clearly and unambiguously contrary to the provisions of the Constitution and causes a threat to it, the President, in conformity with his oath, can refuse to accept such advice. For example, the Chief Justice of India is appointed by the President and he can only be removed by the President as per the provisions of Article 124 (4) of the Constitution. Supposing the Council of Ministers advises the President to remove the Chief Justice contrary to this provision of the Constitution. Not only is the President not bound to accept such advice, he is in fact duty-bound to reject it. If the Council of Ministers advises the President to act contrary to Article 141 and reject a law declared by the Supreme Court, the President must reject such advice. These are extreme cases and hopefully the Council of Ministers will never give advice to the President which causes him to break his own oath of preserving, protecting and defending the Constitution and, therefore, unless the government has gone collectively insane, such a contingency will never arise.

If the Prime Minister, who heads the Council of Ministers and, therefore, speaks for it, is the person who is primarily responsible for governance in this country, then axiomatically and automatically he is required to govern. He is the first amongst equals and he is the head of Council of Ministers. Therefore, if the Prime Minister speaks, directs or orders it would be deemed to be in accordance with the collective decision of the Council of Ministers. In all matters relating to policy, therefore, the Prime Minister’s role is absolutely vital. In the cabinet form of government certainly the Council meets and discusses issues. On some matters the collective opinion of the Ministers may prevail over the views of the Prime Minister, but when the decision is converted into an Order-in-Council, it will read as the collective decision of the Council headed by the Prime Minister. Unless the Prime Minister is totally weak or is an absolute nincompoop, in which case he should not be Prime Minister, the decision of the Council means the decision of the Prime Minister. This is all the more so because every Minister is appointed by the President on the advice of the Prime Minister, which means that in withdrawing his pleasure from a Minister the President will do so on the advice of the Prime Minister. The right to appoint or remove a Minister, therefore, vests fairly and squarely in the Prime Minister.

The Ministers do have an independent role to play, but strictly in accordance with the Rules of Business of the Executive Government as approved by the President. Under these rules business which may be transacted by a Minister is prescribed, the category of cases which must be shown to the Prime Minister in coordination is also prescribed and it is laid down which category of cases will be submitted to the Council for its orders. For example, a Minister cannot overrule the advice rendered by the Finance Ministry, nor take a legal stand contrary to that advised by the Law Ministry. Here if there is conflict of interest the matter must be referred to the Council of Ministers through the Cabinet Secretary and the Prime Minister. It is the responsibility of the Secretary of the Ministry concerned to ensure compliance with the rules, of the Cabinet Secretary to ensure that the departmental secretaries function according to the rules and of the Prime Minister to ensure that his Ministers follow the discipline prescribed by the Rules of Business. Needless to say, it is equally the responsibility of the Minister to ensure that he functions according to the rules.

In a well-balanced Cabinet and a system which works efficiently, normally ministers would run their ministries without interference, but within the overall policy prescribed by the Prime Minister and the Council of Ministers. The Secretary of the Ministry must suitably advise the Minister on the propriety of a proposed decision or course of action and would also tell the Minister in what matters Minister is required to refer the case to the Finance Ministry, the Law Ministry or the Cabinet Secretariat for inclusion in the agenda of the next Council meeting. In a properly working system there would be no clash between the Minister and the Secretary in this behalf. If such clash does take place it is the job of the Secretary not to carry out an order that the Minister is not competent to pass without the approval of the Council, advise the Minister to refer the matter for a Council decision and if he does not, then bring the matter to the notice of the Cabinet Secretary and the Prime Minister. It is the Prime Minister's job to discipline his Ministers and this is perhaps the most important of his powers and functions in a cabinet system.

We have had Prime Ministers such as Jawaharlal Nehru, Lal Bahadur Shastri and Morarji Desai who had adhered to the Constitution and been strong but not intrusive Prime Ministers. We had an imperious Prime Minister such as Indira Gandhi who rode roughshod over everyone, including her own ministers. In her regime the ministers were reduced to ciphers. Rajiv Gandhi was perhaps not imperious by nature but even his ministers acted at his behest only. All our coalition prime ministers, regardless of the lead party, have been weak because their flock of heterogeneous sheep has been difficult to manage because of various political compulsions. The present government is no better, except that here there is a strong factor standing outside the system but dictating terms, Sonia Gandhi and the National Advisory Council.

Extra constitutional authority in a country governed by a written Constitution can never be beneficial to the people at large because power without responsibility is always dangerous. The Constitution is strong enough to be able to permit the constitutional structure to be functional and effective. The danger posed by the present arrangement is that he who is accountable is not necessarily empowered and he or she who is empowered is not accountable. This happened earlier also when Mrs. Indira Gandhi was the Prime Minister and Sanjay Gandhi was powerful, but at least till the Emergency she was able to ensure that it is the constitutional structure which governed. The period of Emergency damaged the constitutional structure and we have yet to fully recover from the after effects of that sad event.

What should the people of India expect and demand of their Prime Minister? First and foremost they can legitimately demand that he should govern, discipline his Council of Ministers and ensure that his officers function according to law and the mandate given to them by the political executive. In turn

this calls for the political executive to function according to ideology, programmes, rationality and consistency. When these qualities are replaced by populism and expediency, the political executive can no longer give its officers either a mandate or a sense of direction and the net result of this can only be anarchy, bad government and corruption.

The people can legitimately expect that the Prime Minister will ensure that India continues to function as a welfare State. When policies are framed which promote the rich and leave the poor out in the cold, except for the crumbs of such a scheme as NREGS, which aims to provide marginal employment but not necessarily create much needed rural infrastructure, then that government cannot be considered to be people friendly. Unfortunately India is showing increasing signs of political dithering, increasing dependence on populism and disinclination on the part of the Prime Minister to govern. Such a situation is fraught with danger because it is beginning to hit at the roots of Westminster type democracy in India. The Prime Minister can offer no excuse for indecision, weak governance, inaction or worse. Compulsions of coalition politics, the existence of an overwhelming extra-constitutional person or institution, even the possible downfall of the government because irresponsible or corrupt partners threaten to bring it down, cannot be offered as justification for non-governance. The Prime Minister, who is required by the Constitution to govern must rule, or else quit. There is no third alternative.
