

## **Role of Executive in Democracy**

### **Introduction:**

I am delighted to be invited here today to address this august body on this very critical topic which has such a pervasive impact on the quality of life for all.

Let us start with the scope of the 'Executive' that I would be addressing for purposes of this lecture. In line with the federal parliamentary system that our Founding Fathers established, the executive is divided into Union Executive, enumerated in Part V Chapter 1 Articles 52 to 78, and State Executive, enumerated in Part VI, Chapter 2 Articles 153 to 167. The executive power of the Union and the States vests in the President or Governor directly or through officers subordinate to him. The Executive, both Union and State, comprises of the political executive, being the elected representatives, as well as the permanent executive, being members of the permanent civil services, who are governed by Part XIV of the Constitution.

The focus of my talk today will be the critical role that the bureaucratic arm is appointed to perform. According to Encyclopedia of Britannica "Bureaucracy is a body of professional, full time officials employed in the civil affairs of a state in non-political capacity". The requirements of the civil service are that it shall be impartially selected, administratively competent, politically neutral and imbued with the service to the community. While all requirements are equally important, what is of paramount significance in the current times is the neutrality of the bureaucracy that its members serve the people of India impartially, though the political regimes may change.

Before we dive into this, let us have a bird's eye view of the broader framework within which this executive operates.

## **Executive and separation of powers:**

The members of the Constituent Assembly were committed to framing a democratic constitution for India. Of the examples that the Assembly looked to, it had to find the answer in the context of the past i.e. India's familiarity with the British cabinet government, as well as the needs of the future. The needs were strength and quick effectiveness, for huge strides in industrial agricultural and social development had to be made and an enormous population well and fairly governed. In the rapidly moving world of the mid 20th century, a new India had to be built almost overnight. How was the leadership for this task to be provided? What type of Executive would be able, strong, effective and quick yet, democratic. The Assembly chose a slightly modified version of the British cabinet System.<sup>1</sup>

With such a parliamentary democracy, any argument for a strict application of separation of powers was thought to be out of place in such a constitutional structure. The principle underlying the doctrine of 'separation of powers' is widely accepted, but the extent of separation varies from country to country. The Constituent Assembly Debates record that the assembly members considered and debated at length whether a rigid separation would be workable for the parliamentary system of democracy and ultimately decided against such a rigid separation.

Mr. KM Munshi had said *"The Parliamentary system produces a stronger government for (a) members of the Executive and Legislature are overlapping and (b) the heads of government control the Legislature."*

In our parliamentary democracy, there is an interface between the legislature and the executive at the level of the Council of Ministers, which is collectively responsible to the legislature.

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<sup>1</sup> The Indian Constitution, Glanville Austin.

Ramaswamy J. stated in *Kartar Singh vs. State of Punjab* that “It is a basic postulate under the Indian Constitution that the legal sovereign power has been distributed between the legislature to make the law, the executive to implement the law and the judiciary to interpret the law within the limits set down by the Constitution”. In terms of constitutional law, executive power is the residue of governmental functions that are neither legislative nor judicial. The political executive is democratically constituted and is subject to legislative control and also to judicial review. However, it is the exceptions which give true colour to the rule, while interpreting it in the context of the complexities of governance and the impact on the common man. In *Vineet Narain vs. Union of India*, it was observed that “it is now a settled practice which has taken firm roots in our constitutional jurisprudence. This exercise is essential to fill the void in the absence of suitable legislation to cover the field.... It is the duty of the executive to fill the vacuum, by executive orders because its field is coterminous with that of the legislature, and where there is inaction even by the executive, for whatever reason, the judiciary must step on, in exercise of its constitutional obligations to provide a solution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field”.

### **The Political Executive *vis a vis* Permanent Executive**

The political and permanent executives are the foundation for the functioning of government. The smooth functioning of government depends on the harmonious relationship between the two. The relationship between the ‘elected officials’ and the ‘appointed officials’ is the starting point for understanding the governing process and has always been a controversial issue in public administration literature. The defining feature of the bureaucracy is the impartial selection to ensure that its members are appointed by an open competition based on merit, in search of the

best, as against politicians who are elected on party lines, by electors who may be influenced by populist tricks and not necessarily by merits alone.

After Lord William Cecil was made her secretary, Queen Elizabeth-I advised him thus, *“This judgement I have of you that you will not be corrupted by any manner of gift, and that you will be faithful to the state and that without respect of my private will you will give me that counsel which you think best.”*

Thus was born the concept of an unbiased, disinterested and committed civil servant. Over four hundred years on, it remains the guiding principle of civil services in many countries of the world, including India.

The conventional concept of the relationship between the non-political executive (the administrator) and the political executive (the politician) envisaged an orderly separation of labour between the two; the politician formulates the policy and the administrator executes them. The determination of public policy according to the needs and aspirations of the people is the responsibility of political leaders and the bureaucrats as the instrument for realizing the policy without any biases.<sup>2</sup> This version of the dichotomy stresses insulation from politics by positing that elected officials cannot interfere with the administration or implementation of policy. Administrators rely on their technical competence to develop the best way to administer the policy and goals set by elected officials, and they must be insulated from political pressures as they exercise discretion based on professional competence to carry out policies set by the governing board or legislature.<sup>3</sup>

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<sup>2</sup> Shanti Kothari & Ramashray Roy (1981), Relations Between Politicians and Administrators at the District Level, Indian Institute of Public Administration, Indraprastha Estate, Ring Road, New Delhi, India, pp.9-12.

<sup>3</sup> Politics and administration in U.S. local governments. [http://goliath.ecnext.com/coms2/gi\\_0199-1972299/Politics-and-administration-inU.html](http://goliath.ecnext.com/coms2/gi_0199-1972299/Politics-and-administration-inU.html)

Unfortunately, as we all are aware, this theory is far from the truth. There are several instances of the bureaucracy getting caught in the cross-fire between rival political parties. This clearly demoralizes the officers and undermines rule of law and condones corruption, Inefficiency and favoritism in administration.

The belief that officers are only meant to implement does not give due credit to the strength of the professional and astute administrators with significant experience. While the big decisions would undoubtedly be taken by the political executive, the senior official in the ministry does have the space to advice correctly on such policy – on its merits, approach, feasibility and intended impact. The political executives sometimes lack the required expertise and professional skills for development planning. This enhances the importance of also justification for the senior administrators association in the formulation of development policy. The role of the bureaucrats goes beyond the conventional norms of implementation of policy, it also includes the formulation of policy, coordination and improvement of administrative machinery, and the exercise of general administrative control over departments of public services. Further, senior administrators are required to assist in the preparation of legislative measures and to ensure that government decisions are properly implemented. In many instances, their advisory role transforms itself into virtually the most effective factor in the determination of policies. The senior administrator has the responsibility of advising on the financial and administrative implications of different policy alternatives. Being more aware than the politicians about the financial resources and possible expenditure involved, administrators determine the allocation of funds for the implementation of plans according to priorities. Even though the formulation and implementation of policy are two separate functions of the government they are closely related to each other. Policy originates from the legislature or the political authorities who gives policy the

legal authority. The bureaucrats do not possess the power of making a policy; they give assistance to the political executives in policy-making.<sup>4</sup>

### **The Constitutional framework of Bureaucracy**

When the draft Constitution was prepared by the Constituent Assembly of India there was no mention of the All India Services in it. The reason was that majority of the members of the Assembly had no sympathy for them and felt that the ICS was beholden to the Crown and had at best been indifferent to the freedom movement and at worst, enabled the machinery used by the British to suppress the freedom struggle. Sardar Vallabh Bhai Patel, the then Home Minister, on 27th April 1948, addressed a letter to the then Prime Minister emphasizing the need to make provision for the civil services in the new Constitution. He wrote *“I need hardly emphasize that an efficient, disciplined and contented service, assured of its prospects as a result of diligent and honest work, and is a sine qua non of sound administration under a democratic regime even more than under an authoritarian rule. The service must be above party and we should ensure that political considerations either in its recruitment or in its discipline and control are reduced to the minimum, if not eliminated altogether...”* At the Constituent Assembly Debates he had said, *“The union will go, you will not have a united India if you have not a good All-India Service which has the independence to speak out its mind, which has a sense of security. If you do not adopt this course, then do not follow the present constitution.”* He was speaking of the federal structure that was emerging and his firm conviction that national solidarity and integrity can be preserved in such a structure only with the assistance of an All-India Service which could function with independence. It was on this basis of this immense faith and trust that Sardar Vallabh Bhai Patel reposed in the civil services that the Assembly agreed to accord

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<sup>4</sup> R.K. Saprú, Development Administration, pp. 308-309.

Constitutional status to these services in its meeting held on 30th April, 1948 and made provision for it in part XIV of the Constitution of India.

Part XIV of the Constitution provides for the Civil Services, including recruitment through the Public Service Commission, guarantees against arbitrariness under Article 311 and the very special provisions under Article 312 for All India Services appointed by the President, under the ultimate rule making control of the Central Government but constituted into State Cadres for serving both the Centre and the State at senior levels. The permanent part of the Executive, therefore, has an independent existence under constitutional guarantee and, therefore, the Civil Service is not permitted to quote the orders of superiors as an excuse for wrongdoing.

### **Right and Duty: Two sides of the same coin**

Our Constitution is the only one in the world which provides this kind of protection to the Civil Service. No other Constitution has the equivalent of Article 311, which provides almost total immunity against arbitrary behaviour of the political executive. The Civil Services in India can never be forgiven for unethical behaviour or for deviation from integrity because the constitutional guarantees presuppose that they will be honest. If they are not they cannot expect constitutional protection. Articles 310 & 311 of the Constitution while providing that a government servant shall hold office during the pleasure of the Government, also provide a safeguard which the eminent jurist Upendra Bakshi has called “Unique in world constitutionalism”. No person employed in Civil capacities under the Union or State shall be dismissed or removed by an authority subordinate to that by which he was appointed and that no such person shall be dismissed, removed or reduced in rank except after an inquiry as provided in Article 311(2).

The Constitutional safeguard also places a higher standard of duty on the civil servants - the duty to obey lawful orders and resist obeying the unlawful and unethical orders and directions though emanating from superiors. It is usually the case that obedience is upheld as a part of discipline and the paramount virtue of a civil servant in a democracy. But, I would maintain it is equally their duty towards democracy to disobey unlawful orders and protect the rights of the common man. There are several instances where the stated objective of the Government is different from the actual implementation on the ground. For instance, legislated land reform laws should be faithfully implemented. But the ground reality is that invariably the powerful landowners with political patronage are not dispossessed of their land holdings, even if illegally expropriated from tribal land holders, whereas the landless continue to be exploited. Civil servants who choose to obey these unlawful directives cannot claim ethical defence. It is not only not their duty to obey unlawful or illegal directives, it is infact their obligation to resist and if the resistance and humble advice may not work, to actually disobey these orders. Only in so doing will they safeguard the common man, the democracy and the Constitution – their true and ultimate masters.

The President and Governor frame rules for the conduct of business in the government. Work is allocated among Ministers as per the Government of India (Allocation of Business) Rules and the manner in which the officers are required to help the President or Governor to exercise his executive functions is governed by the Government of India (Transaction of Business) Rules. What this means is that though officers are subordinate to the President or Governor, they carry out the orders of the Council of Ministers in accordance with the rules framed in this behalf. The Rules of Business of Government do provide for the Secretary to the Government to advise his Minister about the course of action proposed in a matter and to submit to him a note which tells him about the propriety or legality of his orders and suggest that either such orders not be given



or that they be suitably modified. The relationship between the Secretary and the Minister is organic. The Minister has the mandate of the people to govern, but the Secretary has an equivalent mandate of constitution to advise the Minister. Once his advice has been suitably considered, unless the Minister passes an illegal order, the Secretary is bound to implement it.<sup>5</sup>

### **The ground reality**

It is a bitter truth that the civil servant who does discharge his duties honestly and sincerely, including the duty to disobey, is an unsung and unknown hero who inevitably suffers the wrath of the political executive. It is openly acknowledged that India's once-powerful civil service is being stymied in the hands of the increasingly erratic and self-serving political executive. Frequent and arbitrary transfers of officers standing their ground is commonplace. Several reform commissions and committees have reported on what needs to be done to arrest the country's falling administrative standards, but to no avail. These reports including the most recent one—the Second Administrative Reforms Commission—are merely gathering dust. There is no political will to actually implement any of these reforms. The political executive deliberately ignored it because transfers and postings are the major weapons in the hands of politicians to keep the bureaucracy servile.

This undoubtedly would take a toll on the morale of the bureaucracy. In 2011, former Cabinet Secretary T S R Subramanian led 82 like-minded retired bureaucrats seeking an unusual relief from the Supreme Court to bring in administrative reform. They sought three things from the court. One, independent civil service boards at the centre and the states that would make

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<sup>5</sup> Relationship between the Political Executive and the Permanent Civil Service, Second Administrative Reforms Commission, Government of India, January 2007, pp. 166-167.

recommendations on the postings and transfers of civil servants; two, fixed tenures for civil servants; and three, formal recording of instructions/orders/directions from superiors.

The judgment in *T.S.R Subramanian vs. Union of India* was delivered by Justice K.S. Radhakrishnan sitting with Justice P.C. Ghosh. The court formulated three specific directions addressed to the Centre, states and Union territories. First, that they must constitute civil service boards (CSBs) with high-ranking serving officers, who are specialists in their fields, within three months, till Parliament legislates. The court said that the CSB shall guide and advise the Union and state governments on all service matters. The cabinet secretary at the Centre and the chief secretary at the state level would be on the CSBs. The judgment specified that the views of the CSB could be overruled by the political executive only after recording reasons. The court opined that the recording of reasons for actions would contribute to good governance and accountability. The second direction of the court was that minimum tenure of service must be secured for civil servants within three months. The final direction of the SC was to state governments and Union territories to "issue directions like Rule 3(3) (ii) and (iii) of the All India Services (Conduct) Rules, 1968, which will be carried out within three months". This rule provides that the directions of official superiors must be in writing and that any oral instructions must be confirmed by the superior.

These directions of the court were basis recommendations of a slew of committees, including the Hota Committee, 2004, and the second Administrative Reforms Commission, the Jha Commission in 1986 and Central Staffing Scheme, 1996.

This judgment has been criticized by some stating judicial overarch and misuse of Article 32. The best answer is provided by B.R. Ambedkar. Introducing the draft Constitution in the Constituent Assembly on November 4, 1948, Ambedkar said that "*the form of the administration*

*must be appropriate to and in the same sense of the form of the Constitution". He continued that "only when people are saturated with constitutional morality can one take the risk of omitting from the Constitution details of administration and leaving it to the legislature to prescribe".* Ambedkar considered the form of administration so important that he felt that it must be provided for in the text of the Constitution and not left to the legislature to craft. The court in this case draws on these constitutional provisions and stays well within them. But Ambedkar's larger point that the form of administration must correspond to the form of the Constitution cannot be lost sight of. Fixed tenures of service and written documentation of instructions speak to the essential requirements of a constitutional democracy, for they enable an accountable bureaucracy within its own hierarchy. These reliefs also enable some protection from political overreach.<sup>6</sup>

### **Instrumentality in Democracy**

In academia as well as popular literature, the terms bureaucracy and democracy are usually thought of, as antithetical approaches to providing governance for a society. On the one hand although the bureaucracy are necessary for the effective administration of public programs, it is also seen as being legalistic and largely indifferent to the wishes and demands of individual citizens. On the other hand, democratic institutions are assumed to be responsive to the wishes of the public, and to be attempting to map those public preferences into positive outcomes for their citizens.

The stereotype of rigidity in the negative descriptions of bureaucracy may, in fact, be the result of a well- functioning bureaucracy emphasizing equality, and attempting to ensure that all members of society receive the same treatment according to law, even if that style of delivery appears to be inefficient. In other words, to say it positively, bureaucracy was put into place to

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<sup>6</sup> Menaka Guruswamy, Misreading the court, Indian Express, 13 November 2013.

minimize the arbitrary and capricious actions in which governments might otherwise be tempted to engage.<sup>7</sup> Bureaucracy stands for continuity, order, efficiency, standardization and rationalization of government administration. It stands for fairness through universal application of rules and regulation, and as such bureaucracy is not just compatible with it is essential to and forms the basis of a well-functioning democracy.<sup>8</sup>

To go back to the example of civil servants faithfully implementing legislated land reform laws – while the stated policies are for fair, just and non-partisan action, the unstated political directive is often self-serving. It is in this instance that the civil servant must as be faithful to her (?) duty, and know that she (?) must be fair in the rule application so that equal protection of the law is extended to all the citizens particularly the impoverished. The pejorative reputation of the civil servant as associated with red-tape, delay and stifling processes in getting things done, can infact be seen as process driven, standard and fair rule application. The country needs to rely on the civil servant to act in the interests of the citizen and give voice to the otherwise voiceless and oppressed.

We have policy and programmes covering virtually every facet of governance impacting the common man – albeit on paper. Several major interventions have been rolled out to address poverty and depravation – again on paper. It is the implementation and the actual delivery to the intended recipients which is hindered by corruption and political interference. Governance is 5% policy and 95% implementation. At every level of civil service, be it as a Secretary to the Government of India or a Block Developmental Officer??, in all cases, the ultimate goal is to serve the common man faithfully and fairly. All officers have the autonomy to deliver their

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<sup>7</sup> B. Guy Peters, Bureaucracy and Democracy, Public Organiz Rev (2010) 10.

<sup>8</sup> Ali Farazmand, Bureaucracy and Democracy: A Theoretical Analysis, Public Organiz Rev (2010) 10.

services effectively and fairly to all citizens, without fear or favour, and are in fact enjoined by the Constitution to dissent against any illegal order. It is not just a right that you have, it is in fact your duty. Public officials are not servants of their administrative superiors, or of elected representatives, or even of the government that employs them. They are servants first of the people – especially of the disadvantaged and oppressed – and of the Constitution.

### **Code of Conduct**

While the conduct of conduct which applies to civil servants, the All India Services (Conduct) Rules, 1968, may be very detailed and prescriptive, it would be fair to sum it up to say that the cardinal principles of civil service are professionalism, anonymity, integrity and neutrality.

I would not like to go into the literal rules that are expected to be abided by. Instead, I would like to share some personal learnings that I have gathered in [ ] years of service.

Firstly, embrace your role as an agent of change. Recognize that your daily decisions impact real lives. Be thoughtful, show empathy and have compassion. You will not be able to solve every problem, but do your bit every day to facilitate the change.

Secondly, observe and learn from those around you – seniors, juniors, peers as well as the common man. Everyone has a unique perspective. Learning does not always mean following – you may find a better way to handle things; equally, you may learn what not to do.

Thirdly, recognize that unlearning is an equally important facet of learning. Try to appreciate that with changing times unlearning becomes important too. Rigidity and standardization are not synonyms. You have the ability to discern and apply. Always keep an open mind towards this.

Lastly, your integrity is your greatest asset. In today's era of instant gratification through social media, etc do not look for validation from any external source. Let your conscience be your guiding light. It is the only validation that you need.

In his address delivered to the probationers at the All India Administrative Service Training School, Delhi in April, 1947, Sardar Vallabhbhai Patel said *“Above all I would advise you to maintain to the utmost the impartiality and incorruptibility of administration. A civil servant cannot afford to, and must not, take part in politics. Nor must he involve himself in communal wrangles. To depart from the path of rectitude in either of these respects is to debase public service and to lower its dignity. Similarly, no service worth the name can claim to exist if it does not have in view the achievement of the highest standard of integrity.”*

Times have changed, but these core principles remain. I would prefer to leave the system unsung and unseen, having served while in the system with independence, impartiality and boldness rather than having earned riches pricking the conscience.

## **Conclusion**

In conclusion I would like to leave you with a quote from Yes Minister, a political satire on the relationship between the political and permanent executive. The minister exasperated with his secretary says *“The Opposition aren't really the opposition. They're just called the Opposition. But, in fact, they are the opposition in exile. The Civil Service are the opposition in residence.”* It is a profound summation of the role that you are to play – while the political executive have their own agenda to drive, it is upto to you to advice correctly on the merits and legality, and once the policy is formulated it is your duty to implement in a fair and just manner. I would hope that

each one of you finds the strength within you to faithfully discharge your duty towards your ultimate masters – the Constitution and the citizens of India.

Jai Hind.