

CIVIL SERVICE AND GOVERNANCE — ROLE AND RESPONSIBILITIES

(Introductory and Concluding Remarks are Omitted)

[Shri Y. Suryanarayana Memorial Endowment Lecture]

By

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First, let us have an overview of the position of civil service in our democratic set up and its inter-relation with the Legislature, the cabinet and the people.

The Constitution of India has broadly accepted the theory of separation of powers and accordingly enacted various provisions to demarcate the powers and functions of the Legislature, the Executive and the Judiciary. The Legislature passes the laws, the Executive frames the policies, implements the laws and discharges the Governmental functions be it law and order, security, development, welfare programmes, holding elections *etc.* In the parliamentary system of democracy which we have, the Council of Ministers is accountable to the Parliament or the State Legislature and through them to the people. The executive power of the Union vests with the President and the executive power of the State vests with the Governor. Civil services help the President to exercise the executive powers of State. The Constitution enjoins the Council of Ministers to aid and advise the President or the Governor, as the case may be. Such advice is, except in rare circumstances, binding on the President or the Governor who are considered as constitutional figure-heads. Thus, the executive power in reality and in actual practice is exercised by the political executive, namely, the Council of Ministers. It is the primary executive. The non-political executive consists of civil servants or Government servants. Civil Servants or the Government servants are also known by the expression “bureaucracy”, which literally means ‘rule by desk’. It is this class of executive that plays a

vital role in the governance of the country. Civil service has become integral part of democratic process. It is the backbone of any Government.

The Civil services’ commitment to the highest standards of performance and conduct is a guarantee of constitutional and financial propriety and good Government. No Government can function without the help of administrators and official machinery. The civil service guides, actively assists and co-ordinates with the political executive in the formulation of policies, in defining the tasks for good administration, and in the enactment of the laws. That apart, the routine but essential functions relating to governance, implementation of laws and the programmes and policies evolved by the political executive through their help are all left to be handled by the civil service. The presence and role of the bureaucracy is thus all pervasive. Bureaucracy serves as a vital link between the political executive and the Legislature. It provides the information and inputs for legislative measures and for parliamentary debates. At the same time, it provides an inseparable link between the Legislature and the political executive and the people at large by ensuring the implementation of laws and the developmental programmes. What is more, the administrative executive aids and assists the judiciary as well in providing the necessary infrastructure as well as enforcing the decisions and orders of the Courts wherever necessary. The people and the elected representatives of our democratic country have a great stake in the efficiency and integrity of the executive branch represented by the civil

servants. Whichever are the concerns of the society becomes the concerns of the executive as well. The presence of executive or bureaucracy is felt everywhere; the interaction with and dependence on the executive has become part of our every day life. Governmental activity-good or bad, the failures and achievements of the Government, the efficiency or weakness of the Government are all judged by the people by the manner of performance of the civil servants with whom they come under constant contact. Public opinion acts as a mirror to assess the effectiveness or otherwise of civil service system in any society.

The essence of democracy is self-Government, that is, citizens governing themselves through a system of elections and representation. Good governance is the foremost aim of any democratic Government. The Indian system of governance represents a real fusion of the highest executive and legislative authorities. Under the Constitutional scheme, as also in actual practice, the two are not visualized as competing centres of power, but as inseparable partners or copartners in the business of Government. The Council of Ministers which can be appropriately described as the "grand executive committee" of Parliament is charged with the responsibility of governance on behalf of the parent body. The relationship between the Executive and the Legislature may be said to be that of a part to the whole and one of interdependence. While the Executive the right and duty to initiate and formulate legislative and financial proposals before Parliament and to give effect to approved policies, Parliament has the vast power to call for information, to discuss, scrutinize and to put the seal of approval on the proposals made by the Executive. The Executive (*i.e.*, the political Executive consisting of the Council of Ministers) remains responsible and the administration accountable to Parliament. Executive responsibility and administrative accountability are said to be two different but allied functional concepts.

It is the function of Parliament to exercise political and financial control over the Executive and to exercise surveillance over administration and to oversee the way in which the public policies are carried out. It can enquire and examine ex-post facto whether the administration has acted in conformity with the approved policies and utilized the powers conferred on it for the purposes for which they were intended and the monies spent were in accordance with Parliamentary sanction. However, the Parliament does not directly control the administration, nor does it interfere with day-to-day administration. Ultimately, it is the officials who have to explain if things go wrong in the process of implementation. The role of civil servants is to assist the political executive and the Government to carry out Parliamentary wishes. Thus, in a Parliamentary democracy, the officials function in the healthy awareness that they would be ultimately subject to Parliamentary scrutiny and answerable for what they do or fail to do.

Having regard to the above constitutional scheme and the role of executive in day-to-day administration, the bureaucracy occupies a very special position as well as a peculiar position. In one sense, it is accountable to political executive and through it to the Parliament and people and in another sense, it is supposed to be apolitical or politically neutral. Political executive has a right to oversee the performance of the civil servants and insist on the implementation of policies and programmes evolved by it. The top bureaucracy even plays a vital role in helping the political executive in the formulation of policies and laws in tune with the political ideology, of course within the Constitutional framework. Though the administrators can advise and persuade, once the policy decision is taken by political executive, it becomes their duty to implement it. They cannot put spokes into the process of implementation. In this scenario, it is not possible for the civil servants to get detached from political

ideologies and approaches concerning governance just like the members of judiciary. They cannot maintain distance from the political power center and run the administration independently. In taking the policy decisions or drawing up welfare and development schemes, the political executive is presumed to act for public good, though at the back of its mind, the promotion of its party's interest may prevail. Yet, such decisions cannot be questioned. Nothing can be done by the administrative class to erode the concept of accountability of political executive to Parliament and the working relationship between these two wings. All this does not mean that the civil servants should get identified with the partisan interests of political executive and to swear loyalty to them at any cost and felicitously dance to the tunes set by the political executive. Committed bureaucracy does not mean commitment to the ruling party's private agenda or personal interests but it is a commitment to the approved policies, public good and efficient administration. A line has to be drawn at a perceptible point and that "Laxmanrekha" the civil servants should not cross. That is most important. For instance, in matters relating to routine administration, discharge of statutory functions such as investigations, grant of licences *etc.* adherence to rule of law, observance of rules and norms, disposal of representations and appeals, recruitment of staff *etc.*, absolute objectivity and detachment has to be maintained. Laws have to be enforced with even hand, development and welfare programmes ought to be implemented justly without favour or disfavour to anybody and decision-making at any level should be informed by rationality and transparency. Partisan approach on political considerations is wholly out of place in such matters. The principle of accountability to political Executive does not mean and imply that the civil servants should submit to the dictates of Ministers or elected representatives in the discharge of their normal administrative functions. That is what is meant by political

neutrality or apolitical nature of administrators. That is not to say that the civil servants should be aloof from and independent of political executive. As I said earlier, their position is peculiar and what is required is tact and fine balancing act in their relations with the political executive. A feeling should not be entertained by the public that a particular officer has totally aligned himself with political group.

One major challenge facing the bureaucracy today is the absence of healthy equation between the civil service and the political executive. In the words of Dr. *P.C. Alexander* "those belonging to the political executive are the people who have received the mandate to rule. The civil servants' duty is not to rule but to help those who have the mandate to rule, they should express their views frankly and with absolute impartiality and fairness. Failure to do so is not only dishonesty but being unfair to the Minister". There were days when the civil servants, especially, at the top levels, have conducted themselves with that sense of forthrightness and fairness highlighted by Dr. *Alexander*. However, their steel frame image has been constantly dwindling. It is said in desperation that there is neither public nor service element in 'public service. If the salt loses its flavour, what use is it to any one? The tendency to crawl and bend before the political masters for selfish gains or for out of the way favours in service has been on the increase. Many senior civil servants have succumbed to temptations and brought odium to their own class. A large number of the civil servants, even in the top echelons, have started entertaining the idea that political loyalty fetches handsome dividends. These trends have to be effectively reversed before the systemic damage gets worse.

We all know that with every change of Government, there would be mass transfers and suspensions of officials manning key posts, followed by selection of officials who in the

assessment of the new Council of Ministers would be too willing to toe their line. Though persons selected for posting on such extraneous grounds have no moral right to retain their positions, unfortunately, in the process, the honest and dedicated bureaucrats suffer. It is common knowledge that the personnel are picked and chosen by those at the helm of the power-structure to man key and strategic posts, both in the Centre and in the States on subjective and irrelevant considerations. Seniority is overlooked very often for no good reason and the expertise and track record of the officer is often sidelined while giving important postings and promotions. The officials who fearlessly express their views and who do not oblige the political boss in putting up the notes to his or her liking are being victimized very often. All this has brought about a deleterious effect on the civil service and its potential to facilitate good governance. To counteract such unhealthy practices and to protect and encourage honest and efficient officers and to ensure a reasonable level of independence to the administrators, it is necessary to put in place an independent machinery which could act as a check against arbitrary and partisan of treatment of civil servants. A remedy should also be provided to a civil servant who believes he or she is being required to act in a way which is illegal, improper, unethical or in breach of the Constitutional convention, which may involve possible mal-administration, to report the matter to an independent authority in accordance with the procedure laid down. This is what has been proposed in the new Civil Service Code prepared by the Select Committee of the British House of Commons in 1995. Protecting the integrity of the British civil servants was the theme of that report. The same line of approach is desirable in our country too. The need to check politicisation of civil service and to protect them from the onslaughts of unauthorised political interference cannot be over-emphasized. I may point out that Shri *Madhav Godbole*, retired Union

Home Secretary has advocated certain reforms such as framing of rules and regulations covering all aspects of service including the subjects of transfer, extension of service, re-employment and setting up of statutory civil service Boards with powers to review the transfers, promotions, suspensions, premature shifting of the officials holding important positions of Chief Secretary, DGP *etc.*, whose recommendations are to be binding on the Government. It is suggested by the writer that in case the Board is overruled, it should be mandatory for the Government to record reasons and place the file on the table of the Legislature. He further suggested that there should be a ban on extensions and re-employment of officers after retirement unless they are selected in accordance with prescribed statutory procedures. The Committee on Reforms of the Criminal Justice System has recommended a statutory national authority with autonomy and independence to pursue the cases relating to the nexus between criminals, bureaucrats and politicians. This is also an important recommendation.

In *Vineet Narayan's* case, the Supreme Court while striking down the Central Government's single directive order of July, 1997, which required Government's sanction to be obtained for investigating the cases against top officials had given a series of directions to impart independence to the vital investigative bodies namely CBI, Central Vigilance Commission and Enforcement Directorate. In the selection of the personnel to head these departments, the Court has framed certain criteria and prerequisites to insulate them from the influences of political executive. Pursuant to this judgment rendered in December, 1997, people are happy to note that follow up steps were taken and these bodies have become much more independent.

The Constitution makers did not perhaps foresee the maladies of the magnitude that

have presently afflicted the functioning of bureaucracy. The Constitution, under Article 311, provides for certain safeguards necessary to ensure security of tenure and fair treatment of the holders of civil posts in disciplinary matters. The constitution of All India Services with the lofty ideal of ensuring a strong and merit based civil service in the country has been provided for, the unique feature of such service being that the appointees can serve both with the Union and the States. Then, an independent recruiting body, namely, the Public Service Commission in the Centre and in the States have been created by Article 315. Unfortunately, this premier recruiting body, especially in the States, is not as effective and independent as it ought to be. The standards in the selection of personnel manning these important bodies have in due course been diluted. There is a mounting criticism that selection is made on considerations of political patronage and rehabilitation of persons having political connections. Criteria of expertise and caliber which are highly essential for these posts are seldom applied. Unfortunately, the role of Public Service Commission has been reduced to the position of an advisory body. The Supreme Court held long back that the consultation with the Public Service Commission is not even mandatory. The recruitment by the State PSCs is not made regularly according to the timeframe. Adhocism has come to grip these bodies. The Governments have made them almost toothless. In this respect, the UPSC is on a far better footing. It still inspires confidence of the public as an expert recruiting body. Unless steps are taken to tighten the norms for appointment of Chairman and Members of Service Commission and wider participation of experts in the selections is provided for, the recruitment by such body will be lacking credibility and institutional respect. Any talk of efficiency and integrity of civil services will be meaningless unless the quality and standards of recruitment improves. The recruitment for

District cadre posts, such as those conducted by Panchayat Raj Institutions is still worse. We find that the requirement of written test is either dispensed with or even if a written test is held, it is not such that it inspires confidence of the candidates. The officials in-charge of the selection try to accommodate to the extent possible the candidates suggested by the political power centres. We hear disturbing reports about money changing hands in recruitment. The candidates, who got appointed with the help of money or political influence are bound to conduct themselves in the same manner when they become Government servants. There is every need to reform and refine the recruitment process so as to impart objectivity and fairness in selection. The unemployed youth should not get disillusioned on account of dubious methods of recruitment. The civil servants should rise to the occasion and do their best to make the recruitment process transparent and fair.

Then, we have the formidable problem of corruption gripping the public service. Corruption is the black Godmother of all evils in the society. Corruption is anti-people and number one enemy of democratic institution. We hear horrendous, bewildering and sometimes interesting stories of corruption. Corruption is a common phenomenon in several countries; only the degrees of corruption vary. As far as India is concerned, it occupies 21st place amongst 91 countries. We have a solace that there are 20 more countries which are more corrupt. The most functional definition of corruption is the "misuse of public office for private profit or political gain". It is unnecessary to narrate what adverse effects the corruption has on the economic progress and development of the country and above all the moral fiber of the society. "Corruption creates incentives for officials to erect additional bureaucratic obstacles with a view to increasing opportunities for more bribes". According to the assessment of the World Bank,

institutional and economic policy factors generate a nourishing environment for corruption. The very security of tenure of civil servants has given rise to a disposition to become corrupt. Of course, for that reason, we cannot adopt the policy of "hire and fire" in public service. The disturbing trend is that corruption has also afflicted the members of All India Service, though it was a rarity in those services during the first two or three decades after independence. The young officers who start their career with great hope, expectation and zeal to serve the people are, in due course of time, getting lured to corrupt practices. Even the Judiciary is not free from corruption, though it may vary in degree. It is an unfortunate trend. The general decline in values, the rise in the materialistic trends, the impact of political corruption, operation of liaisoning agents, the institutional procedures and systems giving scope for misuse of power and above all indifference of public, all these are contributory factors of corruption. How best to combat the corruption both by promoting value orientation, by effective institutional changes and by devising more effective legal measures are on the lips of everybody. Though there is no magic formula, the urgent need to stem the rot and to minimize the corruption if not to eliminate it, should be our topmost priority. Fortunately, in some areas, such as Services sector, there are reports that the scope for corruption has diminished on account of economic reforms, the growth of technology and decline of monopolistic enterprise. Further, simplification of procedures, curtailment of discretion by evolving objective norms and guidelines and strengthening of surveillance and investigative machinery are some of the steps that could be thought of to check corruption. Above all, there must be a continuous exercise right from the school days to develop a repulsive attitude against corruption. Public servants should have the feeling that honesty pays. Inculcation of moral values in keeping with our cultural heritage should be a part of

continuing training programme. One more important step is that due protection should be provided to the genuine whistle blowers who disclose and expose the corruption of superior officials and staff-whether they be the members of the public or employees of the same establishment. The Law Commission of India has recently prepared the draft legislation for the consideration of the Central Government. There are enactments such as the Whistle Blowers Protection Act of 1988 in USA and the Public Interest Disclosure Act of 1998 in United Kingdom which encourage disclosure of Information regarding corruption and mal-administration and afford protection to the Informants from reprisals. At the same time, provisions are made to curb malicious disclosures. I am told that the Bill is under active consideration of the Government. This will be another important step to combat corruption.

Reference may also be made to the Information Act recently enacted by the Parliament which has not yet been brought into force. Freedom of information ensures transparency in administration and minimizes the scope for unbridled exercise of power with a hidden objective. The right to information subject to just exceptions is now considered to be part of the fundamental right of freedom of speech and expression, thanks to the innovative interpretation of Article 19(1)(a) by the Supreme Court. The Freedom of Information Act undoubtedly introduces a new culture of administration with its incidental effect on the control of corruption.

It is axiomatic that societal, economic and political changes have inevitable impact on public services. The changing times with the emerging trends of economic development and socio-cultural ethos throw up new challenges and beckons a new outlook and dynamic role of the executive. It was said by *Huxley* that "the charm of the history and enigmatic lesson consists in the fact that from

age to age nothing changes and yet everything is different.” Let us see how far the recent trends have brought about a qualitative difference in the role and responsibilities of civil servants.

There are a number of issues which are coming up before the Constitutional Courts by way of Public Interest Litigation. The foundation of PIL is the executive inaction or excesses in carrying out the duties enjoined on the administrators either under the Constitution or the statute or the approved policies of the Government. Issues relating to environment, health, education, human rights, welfare of children, women, depressed classes, bonded labour and workmen, utilization of funds, execution of welfare schemes, food and shelter, grants of land, disposal of public properties, award of contracts and permits are being raised in these PIL cases. Prompted by the twin objectives of safeguarding the fundamental rights of the people and to activate the executive machinery, the Supreme Court and High Courts while disposing of these PILs have laid down the law and issued necessary directions to redress the grievances. Such case-law has developed in volumes. It is necessary for the civil servants to get acquainted with these cases and the directives given therein. Otherwise, the officials may even be exposed to the charge of contempt of Court. It is also necessary for the executive officials who have statutory or quasi-judicial functions to perform under various enactments in one capacity or the other, to have a grip over the fundamentals of administrative law. The reason is that even genuinely oriented decisions taken by the executive authorities are often invalidated by Courts on account of legal infirmities in decision making process. It is said that the mode and manner of arriving at the decision is as important as ultimate decision reached. Conformity with the principles of natural justice *i.e.* the principle that no one should be condemned without being heard, the need to give reasons for the decision, the

obligation to refer to the salient points of the reply or representation given by the affected party—these requirements have to be adhered to in the process of decision making. The officials shall be suitably trained to handle these responsibilities satisfactorily so that the public interest will be better served. The administrator is called upon to play the role of advocate and Judge many a time. When I refer to the role of an advocate, I mean, a role akin to advocate, for instance, while presenting a view-point before a Committee or Commission and in preparing the draft pleadings in a legal action by or against the State. He must be geared up to undertake such responsibilities as well.

The last decade has seen the empowerment of people at the grass root levels. There is growing political awareness and awareness of legal rights. The sections of society who had no voice earlier have begun to assert themselves. People everywhere in the country expect more from the Government in terms of qualitative governance. The 73rd and 74th amendments to the Constitution have given a fillip to the ideal of self-governance at the grass root level *i.e.*, at the village and taluk levels. The Panchayat Raj Institutions and municipal bodies are given wide powers to take care of many aspects of administration and planning and development in the villages and towns. Peoples’ participation in governance at the village and municipal town levels, has become a reality. These developments do call for a new dynamic role, new orientation and new mind set on the part of the public servants. They are called upon to play a pro-active role shedding the old fashioned ideas of power and control. Field level working, interaction with the public and public representatives and involvement of people and NGOs in welfare schemes and measures aimed at toning up the administration, have become the part of style of functioning of civil servants. The law and order situation has also to be monitored and policing methods suitably modulated in

tune with these developments, with an emphasis on the preventive aspect of crime control. The civil servants can no longer afford to be immune and impervious to public opinion and feelings.

The other epoch making development have taken place in the field of information technology, services sector and economic sphere. The computer age has come to stay, economic reforms aimed at liberalization and integration with global economy have been ushered in; the States' monopoly in industrial and services sector has been substantially diluted. New programmes and systems aimed at infrastructure development have been put in place. The management of country's economic and social resources has acquired a new dimension. The civil servants have to play crucial role in harnessing these developments for the betterment of the lives of the people. At the same time, they should be ever conscious of the fact that they are in service but not in commerce. Necessary expertise and managerial skills are to be inculcated in order to fall in line with these changes and to enhance the quality of governance. The image of being mere file pushers should change.

Another core issue which faces the nation is how best to protect the economic and commercial interests of our country within the framework of WTO regime. The patent protection and promotion of international trading are the problems which the bureaucrat specialists have to tackle in this regard. The civil service must not only be part of the process of national and international change, which is taking place, but they must be at the forefront of the process guiding, initiating, innovating and managing the change.

These technological and economic changes have also generated certain socio-cultural problems which may in due course of time throw up formidable challenges to the bureaucracy to tackle. The consumerism has

made rapid strides and ostentatious expenditure is galloping. The cost of living has been steadily going up. But, value based traditional culture is eroding. Prime private services in the sectors such as health, communication and electricity are available to the haves but not to under-privileged sections. The ever widening gap in the level of services being available to some and not to others and the consequent discontentment is not a welcome feature. Added to this, the disinvestments of public sector and the decline in labour intensive industries and the ever increasing population are bound to add to the number of unemployed phenomenally. These developments together with the pronounced disparities of income resulting from the new developments is bound to create new challenges to the civil servants to manage the resultant social turbulence. The other area of serious concern is going to be the management of natural resource base of the country in a sustainable manner. The pressure on water, space and energy would demand greater skills and dynamism in terms of regulation and equitable distribution of the scarce resources.

The other important contemporary issue, which needs to be tackled by civil servants with foresight, firmness and planning, is the problem of internal security caused by the activities of extremists and terrorists. This problem has assumed enormous proportions in the recent times.

For want of time, it is not possible to deal with many other allied problems and challenges which the civil service personnel in the near future have to face and tackle.

In any age and in any sphere, the guideposts for executive functioning should be sensitivity, rationality and professionalism. Effective capacity building of the civil servants to cope up with new challenges and contemporary developments, without any political agenda behind it, should be one of

the important priorities of the Governments. administration and good governance should be the motto and movement of modern India. The gap between expectations and achievements should narrow down. Clean India.

JUDICIARY AND THE ROLE OF THE JUDGE IN THE NEW MELLIENNIUM

By

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One of the strongest pillars and finest institution of the socialist, secular, democratic country is the judiciary. The greatest asset and the strongest weapon in the armoury of the judiciary is the confidence it commands and faith. It inspires in the minds of the people in its capacity to do even handed justice and scales in balance in any dispute. The people have always considered the judiciary has the ultimate guardian of their rights and liberties and this institution has amply stood the test of time . Judiciary is playing very important role in resolving the socio-economic political problems, especially in resolving sensitive and burning issues like adoption of uniform civil code, communal violence, reservations, empowerment of woman, protection of weaker sections, mandir - masjid issue in Ayodhya, interstate water disputes, protection of fundamental rights of people which are enshrined in Part III of the Indian Constitution and conflict between Judiciary and Legislature and *etc.*, In this matters the role played by the judiciary is very much commendable and it is the matter of pride for every citizen of India.

But in recent years ugly incidents showed that judiciary has been under constant attacks external as well as internal and people are losing their faith in this finest institution. Recently the extraordinary incident and unbelievable story of the Metropolitan Magistrate in Ahmedabad, who in return for an inducement reported to be Rs.40,000/- issued bailable warrants against great dignitaries like President of India, the Chief Justice of

India, sitting Judge of the Supreme Court and the Former President of the Supreme Court Bar Association. And the Karnataka, Rajasthan, Punjab and Delhi scandals and going on the massive leave by the 25 Judges of the Punjab and Haryana High Court, created an unprecedented outcry in the judiciary as well as in the public. Further non-judiciary activities of Judges like making public speeches on highly controversial matters, discussing with others pending decisions, going to receive or see of big political bosses at the air port or seeking favour from politicians and mounting of arrears of cases in the Courts and pending cases in the Courts for the past 10 to 20 years without disposal, competence of the Judges to handle socio-economic, political, complexed problems and *etc.*, are aggravating factors and these factors really threatening the independence of the judiciary and undermining the confidence of the public in the system of justice itself without which no society can survive. Retired Chief Justice of India Lordship JUSTICE J.S. VERMA has said that “judiciary today suffered with three ‘C’s caste, cost and corruption and fear of contempt of Court action prevented people from speaking about it. He further expressed that we cannot lose any more time and must use social sanctions which are more powerful than legal steps. If outside agency has to enforce this it would be sad day for judiciary”. One of the criticisms against Judges is that after elevating to the Bench Judge feel that he is supreme