

WORKING OF INSTITUTIONS

INTRODUCTION

Democracy is not just about people electing their rulers. In a democracy the rulers have to follow some rules and procedures. They have to work with and within institutions.

In this process we come across three institutions that play a key role in major decisions – legislature, executive and judiciary.

HOW IS A MAJOR POLICY DECISION TAKEN?

- 1 A Government Order:** On August 13, 1990, the Government of India issued an Order. It was called an Office Memorandum. Like all government orders, it had a number and is known by that: O. M. No. 36012/31/90-Est (SCT), dated 13.8.1990. The Joint Secretary, an officer in the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pensions, signed the Order. It was quite short, barely one page. It looked like any ordinary circular or notice that you may have seen in school. The government issues hundreds of orders every day on different matters. But this one was very important and became a source of controversy for several years.

This Order announced a major policy decision. It said that 27 per cent of the vacancies in civil posts and services under the Government of India are reserved for the Socially and Educationally Backward Classes (SEBC). SEBC is another name for all those people who belong to castes that are considered backward by the government. The benefit of job reservation was till then available only to Scheduled Castes and Scheduled Tribes. Now a new third category called SEBC was introduced. Only persons who belong to backward classes were eligible for this quota of 27 per cent jobs. Others could not compete for these jobs.

- 2. The Decision Makers:** Clearly, such a big decision could not have been taken by the person who signed that document. The officer was merely implementing the instructions given by the Minister of Personnel, Public Grievances and Pensions, of which the Department was a part.

Let us go over some of the main points that you covered then:

- President is the head of the state and is the highest formal authority in the country.
- Prime Minister is the head of the government and actually exercises all governmental powers. He takes most of the decisions in the Cabinet meetings.
- Parliament consists of the President and two Houses, Lok Sabha and Rajya Sabha. The Prime Minister must have the support of a majority of Lok Sabha members.

The Government of India had appointed the Second Backward Classes Commission in 1979. It was headed by B.P. Mandal. Hence it was popularly called the Mandal Commission. It was asked to determine the criteria to identify the socially and educationally backward classes.

For several years, many parliamentarians and parties kept demanding the implementation of the Commission's recommendations.

Several developments took place after that:

- The President of India in his address to the Parliament announced the intention of the government to implement the recommendations of the Mandal Commission.
- On 6 August 1990, the Union Cabinet took a formal decision to implement the recommendations.
- Next day Prime Minister V.P. Singh informed the Parliament about this decision through a statement in both the Houses of Parliament.

- The decision of the Cabinet was sent to the Department of Personnel and Training. The senior officers of the Department drafted an order in line with the Cabinet decision and took the minister's approval. An officer signed the order on behalf of the Union Government. This was how O.M. No. 36012/ 31/90 was born on August 13, 1990.

For the next few months, this was the most hotly debated issue in the country.

Who resolved this dispute? You know that the Supreme Court and the High Courts in India settle disputes arising out of governmental decisions. Some persons and associations opposed to this order filed a number of cases in the courts. They appealed to the courts to declare the order invalid and stop its implementation. The Supreme Court of India bunched all these cases together. This case was known as the 'Indira Sawhney and others Vs Union of India case'. Eleven judges of the Supreme Court heard arguments of both sides. By a majority, the Supreme Court judges in 1992 declared that this order of the Government of India was valid. At the same time the Supreme Court asked the government to modify its original order. It said that well-to do persons among the backward classes should be excluded from getting the benefit of reservation. Accordingly, the Department of Which institutions are at work in the running of your school? Would it be better if one person alone took all the decisions regarding management of your school? Personnel and Training issued another Office Memorandum on September 8, 1993. The dispute thus came to an end and this policy has been followed since then.

- 3. Need for Political Institutions:** Governing a country involves various activities. One of the most important work of Government is the welfare of the people. The Government formulates and implements several welfare schemes. Some persons have to take decisions on how to go about these activities. Others have to implement these decisions. If disputes arise on these decisions or in their implementation, there should be someone to determine what is wrong and what is right. So to attend all these tasks, several arrangements are made in all modern democracies. Such arrangements are called **institutions**. Working with institutions is not easy. Institutions involve rules and regulations. This can bind the hands of leaders. Institutions involve meetings, committees and routines. This often leads to delays and complications. Therefore dealing with institutions can be frustrating. But that is not the spirit of democracy. Some of the delays and complications introduced by institutions are very useful. They provide an opportunity for a wider set of people to be consulted in any decisions. Institutions make it difficult to have a good decision taken very quickly. But they also make it equally difficult to rush through a bad decision. That is why democratic governments insist on institutions.

PARLIAMENT

- 1. Why do we need a parliament?** In all democracies, an assembly of elected representatives exercises supreme political authority on behalf of the people. In India such a national assembly of elected representatives is called Parliament. At the state level this is called **Legislature** or Legislative Assembly.
- (i) Parliament is the final authority for making laws in any country. This task of law making or legislation is so crucial that these assemblies are called legislatures. Parliaments all over the world can make new laws, change existing laws, or abolish existing laws and make new ones in their place.
 - (ii) Parliaments all over the world exercise some control over those who run the government. In some countries like India this control is direct and full. Those who run the government can take decisions only so long as they enjoy support of the Parliament.
 - (iii) Parliaments control all the money that governments have. In most countries any the public money can be spent only when the Parliament sanctions it.
 - (iv) Parliament is the highest forum of discussion and debate on public issues and national policy in any country. Parliament can seek information about any matter.

- 2. Two Houses of Parliament:** Most large countries divide the role and powers of the Parliament in two parts. They are called Chambers or Houses. One house is usually directly elected by the people and exercises the real power on behalf of the people. The second House is indirectly elected and performs some special functions. The most common work for the second House is to look after the interests of various state, regions of federal units. In our country, the Parliament consists of two houses. The two Houses are known as the Council of State (Rajya Sabha) and the House of the People (Lok Sabha).

Lok Sabha is more powerful than Rajya Sabha:

(i) Any ordinary law needs to be passed by both the Houses. But if there is a difference between the two Houses, the final decision is taken in a joint session in which members of both the Houses sit together. Because of the larger number of members, the view of the Lok Sabha is likely to prevail in such a meeting.

(ii) Lok Sabha exercises more powers in money matters. Once the Lok Sabha passes the budget of the government or any other money related law, the Rajya Sabha cannot reject it. The Rajya Sabha can only delay it by 14 days or suggest changes in it. The Lok Sabha may or may not accept these changes.

(iii) Most importantly, the Lok Sabha controls the Council of Ministers. Only a person who enjoys the support of the majority of the members in the Lok Sabha is appointed as the Prime Minister. If the majority of the Lok Sabha members say they have 'no confidence' in the Council of Ministers, all ministers including the Prime Minister, have to quit. The Rajya Sabha does not have this power.

POLITICAL EXECUTIVE

At different levels of any government we find functionaries who take day-to-day decisions but do not exercise supreme power on behalf of the people. All those functionaries are collectively known as the Executive. They are called executive because they are in charge of the 'execution' of the policies of the government. Thus, when we talk about 'the government' we usually mean the executive.

- 1. Political and Permanent Executive:** In a democratic country, two categories make up the executive. One, that is elected by the people for a specific period, is called the political executive. Political leaders who take the big decisions fall in this category.

In the second category, people are appointed on a long-term basis. This is called the permanent executive or civil services. Persons working in civil services are called civil servants. They remain in office even when the ruling party changes. These officers work under political executive and assist them in carrying out the day-to-day administration.

Who is more powerful? In a democracy the will of the people is supreme. Though the civil servant is usually more educated and has more expert knowledge of the subject, but as the minister is elected by the people thus empowered to exercise the will of the people on their behalf. They are finally answerable to the people for all the consequences of their decisions. That is why the minister takes all the final decisions. The minister decides the overall framework and objectives in which decisions on policy should be made. The experts can tell the route, but someone with a larger view decides the destination. In a democracy elected ministers perform this role.

- 2. Prime Minister and Council of Ministers:** Prime Minister is the most important political institution in the country. Yet there is no direct election to the post of the Prime Minister. The President appoints the Prime Minister. But the President cannot appoint anyone he/she likes. The President appoints the leader of the majority party or the coalition of parties that commands a majority in the Lok Sabha, as Prime Minister. In case no single party or alliance gets a majority, the President appoints the person most likely to secure a majority support. The Prime Minister does not have a fixed tenure. He continues in power so long as he remains the leader of the majority party or coalition.

After the appointment of the Prime Minister, the President appoints other ministers on the advice of the Prime Minister. The Ministers are usually from the party or the coalition that has the majority in the Lok Sabha. The Prime Minister is free to choose ministers, as long as they are members of Parliament. Sometimes, a person who is not a member of Parliament can also become a minister. But such a person has to get elected to one of the Houses of the Parliament within six months of appointment as minister.

Council of Ministers: Council of Ministers usually has 60 to 80 Ministers of different ranks.

- (i) Cabinet minister are usually leaders of the ruling party or parties who are in charge of the major ministries. Usually the Cabinet Ministers meet to take decisions in the name of the Council of Minister. Cabinet is thus the inner ring of the Council of Ministers. It comprises about 20 ministers.
- (ii) Ministers of State with independent charge are usually in-charge of smaller Ministries. They participate in the Cabinet meeting only when specially invited.
- (iii) Ministers of State are attached to an required to assist Cabinet Ministers.

Collective Responsibility: The Cabinet works as a team. The ministers may have different views and opinions, but everyone has to own up to every decision of the Cabinet. No minister can openly criticise the decisions of the government, even if it about another Ministry of Department.

- 3. Powers of the Prime Minister:** The constitution is silent on the powers of Prime-Minister. However, as the head of the government, he has wide ranging powers.

He chairs Cabinet meetings. He coordinates the work of different Departments. His decisions are final in case disagreements arise between Departments. He exercises general supervision of different ministries. All ministers work under his leadership. The Prime Minister distributes and redistributes work to the ministers. He also has the power to dismiss ministers. When the Prime Minister quits, the entire ministry quits.

As political parties have come to play a major role in politics, the Prime Minister controls the Cabinet and Parliament through the party. The media also contributes to this trend by making politics and elections as a competition between top leaders of parties.

However, in recent years the rise of coalition politics has imposed certain constraints on the power of the Prime Minister. The Prime Minister of a **coalition government** cannot take decisions as he likes. He has to accommodate different groups and factions in his party as well as among alliance partners. He also has to heed to the views and positions of the coalition partners and other parties, on whose support the survival of the government depends.

- 4. The President:** The President is the head of the State. He exercise only nominal powers. The President supervises the overall functioning of all the political institutions in the country so that they operate in harmony to achieve the objectives of the state.

The President is not elected directly by the people. All the Members of Parliament (MPs) and Members of State Legislative Assemblies (MLAs) elect her. A candidate standing for President's post has to get a majority of votes to win the election. The President can never claim the kind of direct popular mandate that the Prime Minister can. This ensures that she remains only a nominal executive.

Powers of President: All government activities taken place in the name of the President. All laws and major policy decisions of the government are issued in her name. All major appointments are made in the name of the President. These include the appointment of the Chief Justice of India, the Judges of the Supreme Court and the High Courts of the states, the Governors of the states, the Election

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Commissioners, Ambassadors to other countries, etc. All international treaties and agreements are made in the name of the President. The President is the supreme commander of the defence forces of India. The President exercises all these powers only on the advice of the Council of Ministers.

A bill passed by the Parliament becomes a law only after the president gives assent to it. If the President wants, she can delay this for sometime and send the bill back to the Parliament for reconsideration. But if the Parliament passes the bill again, she has to sign it.

When a party or coalition of parties secures a clear majority in the elections, the President, has to appoint the leader of the majority party or the coalition that enjoys majority support in the Lok Sabha. When no party or coalition gets a majority in the Lok Sabha, the President exercises her discretion. The President appoints a leader who in her opinion can muster majority support in the the Lok Sabha.



The President, Shri Pranab Mukherjee administering the oath of office of the Prime Minister to Shri Narendra Modi, at a Swearing-in Ceremony, at Rashtrapati Bhavan on 26 May 2014.

THE JUDICIARY

An independent and powerful judiciary is considered essential for democracies. All the courts at different levels in a country put together are called the judiciary. The Indian judiciary consists of a Supreme Court for the entire nation, High Courts in the states, District Courts and the courts at local level. India has an integrated judiciary. It means the Supreme Court controls the judicial administration in the country. Its decisions are binding on all other courts of the country. It can take up any dispute.

- Between citizens of the country;
- Between citizens and government;
- Between two or more state governments; and
- Between governments at the union and state level.

It is the highest court of appeal in civil and criminal cases.

It can hear appeals against the decisions of the High Courts.

Independence of the judiciary means that it is not under the control of the legislature or the executive. The judges do not act on the direction of the government or according to the wishes of the party in power. That is why all modern democracies have courts that are independent of the legislature and the executive. India has achieved this. The judges of the Supreme Court and the High Courts are appointed by the President on the advice of the Prime Minister and in consultation with the Chief Justice of the Supreme Court. In practice it now means that the senior judges of the Supreme Court select the new judges of the Supreme Courts and the High Courts. The senior most judge of the Supreme Court is usually appointed as the Chief Justice. It is nearly impossible to remove his or her from that position. A judge can be removed only by an impeachment motion passed separately by two-thirds members of the two Houses of the Parliament.

The Supreme Court and the High Courts have the power to interpret the Constitution of the country. They can declare invalid and law of the legislature or the actions of the executive, whether at the Union level or at the state level, if they find such a law or action is against the Constitution. They can determine the Constitutional validity of any legislation or action of the executive in the country, when it is challenged before them. This is known as the **judicial review**.

Any one can approach the courts, if public interest is hurt by the actions of government. This is called public interest litigation. The courts intervene to prevent the misuse of the government's power to make decisions. They check malpractices on the part of public officials. That is why the judiciary enjoys a high level of confidence among the people.

Need to Know?

Presidents all over the world are not always nominal executives like the President of India. In many countries of the world, the President is both the head of the state and the head of the government. The President of the United States of America is the most well known example of this kind of President. The US President is directly elected by the people. He personally chooses and appoints all Ministers. The law making is still done by the legislature (called the Congress in the US), but the president can veto any law. Most importantly, the president does not need the support of the majority of members in the Congress and neither is he answerable to them. He has a fixed tenure of four years and completes it even if his party does not have a majority in the Congress.

This model is followed in most of the countries of Latin America and many of the ex-Soviet Union countries. Given the centrality of the President, this system of government is called the Presidential form of government. In Countries like ours that follows the British model, the parliament is supreme. Therefore our system is called the parliamentary system of government.