

# WORKING OF INSTITUTIONS

In a democracy, the rulers have to follow some rules and procedures. They have to work with and within institutions. In this process, they come across three institutions that play a key role in major decisions. These institutions are legislature, executive and judiciary. In this chapter, we will understand how all the institutions together carry on the work of the government.

## PROCESS OF TAKING A MAJOR POLICY DECISION

A major policy decision is taken through a government order. To know the process of taking a major policy decision, it is important to know about government order and its issuing.

### A GOVERNMENT ORDER

- **Issuing of Government Order** A government order is a written direction on an issue signed by a government authority (office). e.g. On 13th August, 1990 the Government of India issued an order. It was called an Office Memorandum. It had a specific number. It was signed by the Joint Secretary, who is an officer in the Department of Personal and Training in the Ministry of Personal, Public Grievances and Pensions.
- **Decision Announced by an Order** The order announced a major policy decision. According to the order, 27% of the vacancies in civil posts and services of government were reserved for SEBC (Socially and Educationally Backward Classes). Earlier benefit of job reservation was available to Scheduled Castes (SCs) and Scheduled Tribes (STs). Now the third category SEBC was also eligible for quota of 27%.
- **Controversy Over the Order** The issuing order led to the country wide protest. Some of the protests were violent- As a result, the issue became the most debated in the media with different views and opinions. The people reacted strongly because this decision affected thousands of job opportunities.
- **Appeal to Stop Implementation of Order** Some person and associations filed a number of cases in courts against the order. They appealed to

declare the order invalid and stop its implementation. This case came to be known as the Indira Sawhney and Others vs Union of India Case.

- Supreme Court's Declaration Over the Order By a majority, the Supreme Court in 1992, declared the order valid. It also asked the government to identify its original order.

### **MODIFICATIONS IN ORDER AND END OF DISPUTE**

The order was modified and declared that well-to-do persons of backward classes should be excluded from the benefit of reservation.

On 8th September, 1993 another memorandum was issued by the Department of Personal Training. Since then, the dispute ended and the same policy was followed.

### **MAIN EVENTS BEFORE THE PASSING OF GOVERNMENT ORDER**

1. The main events before the passing of Government Order for OBC reservation were as follows
2. The Government of India had appointed the Second Backward Classes Commission in 1979. It was headed by BP Mandal. Hence, it was popularly called the Mandal Commission.
3. The Commission gave its Report in 1980 and made many recommendations. One of these was that 27% of government jobs be reserved for the socially and economically backward classes. For several years, many parliamentarians and parties kept
4. Then came the Lok Sabha election of 1989. In its election manifesto, the Janata Dal promised that if voted to power, it would implement the Mandal Commission report.
5. The Janata Dal did form the government after this election.
6. Its leader VP Singh became the Prime Minister and he implemented it.

### **THE DECISION MAKERS**

The major decision involves some major functionaries in our country. These are

- President He is the head of the state and is the highest formal authority in the country.

- Prime Minister He is the head of the government and actually exercises all governmental powers. He takes most of the decisions in the Cabinet meetings.
- Parliament It consists of the President and two houses—Lok Sabha and Rajya Sabha. The Lok Sabha or the Lower House is composed of the elected representatives of the people. The Rajya Sabha or Upper House represents the interests of the States and Union Territories. The Prime Minister must have the support of a majority of Lok Sabha members.
- In our country, all the major decision are taken by the council of ministers in the cabinet meetings headed by the Prime Minister. After that, the decisions are discussed in Parliament (Lok Sabha and Rajya Sabha) and after the approval of Parliament (approval by the majority of members of Lok Sabha and Rajya Sabha), It is sent to President for final approval. Once the decision is approved by the President, it is ready to be implemented and issued by the concerned government authority (officer) as government order.

## **HOW TO OPPOSE GOVERNMENT DECISIONS**

If Some people or associations are not satisfied by government orders and there is a dispute regarding government order, then they can file the cases in the Supreme Court or in High Court.

For example, some persons and associations filed a case in the Supreme Court against the Government of India decision of 27% of reservation for socially and educationally backward classes in civil posts and services. This case was known as 'Indira Sawhney and Other vs Union of India Case'.

## **NEED FOR POLITICAL INSTITUTIONS**

The arrangements made in the democracies to take decisions implemented the decision to see what is wrong and what is right in case of disputes regarding the decision are sailed Political Institutions.

So without the functions of (the tasks assigned to the political institution, the democracy cannot work. Institutions involve rules and regulations, which can bind the hands of the leaders. By having meetings and making committees institution consult a wider set of people for any decision, Institution makes it

difficult to have a good decision taken very quickly, but at the same time, they make it equally difficult to rush through a bad decision.

## **PARLIAMENT**

Parliament is a set of people elected regularly by the people of the country, directly (through direct elections) or Indirectly (through indirect election).

All the by the government, before implementation, are put in the Parliament for discussion. Decisions can be implemented only after the approval by the Parliament.

## **NEED OF PARLIAMENT**

- We need Parliament due to the following reasons.
- Parliament is the final authority for making new laws and changing existing laws in our country.
- In India, the control of Parliament over the government is direct and full. Those who run the government can take decisions only as long as they enjoy the support of the Parliament
- Parliament controls all the money that the government has. In most countries, public money can be spent only when Parliament sanctions it.
- Parliament is the highest forum of discussion and debate on public issues and national policy in my country. Parliament can seek information about any matter.

## **TWO HOUSES OF PARLIAMENT**

The Parliament plays a central role in modern democracies. Large countries have divided the role and powers of Parliament into two parts. They are called **Chambers or Houses**.

- Usually, One house is directly elected by the people and exercises the real power on behalf of the people. The second house is usually elected indirectly, its main work is to look after the Interests of Various States, regions or federal units. Indian Parliament consists of two houses or chambers.

- **Lok Sabha (House of the People) or Lower Chamber** It is Usually directly elected by the people and exercises the real power on behalf of the people.
- **Rajya Sabha (Council of States) or Upper Chamber** It is indirectly elected and performs special functions such as interest of various states, regions or federal units.
- **The President of India** is a part of the parliament of, although she is not a member of either house. Due to this reason, all laws made in the houses come into force only after they receive the assent of the President.

### **SPECIAL POWERS OF LOK SABHA OVER RAJYA SABHA**

Our Constitution gives some special powers to Rajya Sabha but on most of the matters, the Lok Sabha exercises supreme power.

These are

- 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, where the view of Lok Sabha is likely to prevail because of its larger number of members.
- Lok Sabha exercises more powers in money matters. Once the Lok-Sabha passes the budget of the government or any other money-related law or Money Bill, foe Rajya Sabha cannot reject it.
- The Rajya Sabha can only delay it by 14 days or suggest to change it. But, foe Lok Sabha may or may not accept these changes.
- Most importantly, foe Lok Sabha controls foe Council of Ministers. Only a person Who enjoys the support of foe majority of foe members in foe Lok Sabha is appointed foe Prime Minister. If the majority of foe LokSabha members say that they have 'no confidence' in foe Council of Ministers, all ministers including foe Prime Minister have to quit. But, foe Rajya Sabha does not have this power.

### **EXECUTIVE**

The functionaries (the people and organisation) who take day-to-day decisions but do not exercise supreme power on behalf of the people are known as

executive. They are called executive because they are in charge of the execution of the policies of the government. By executive we usually mean the government.

### **POLITICAL AND PERMANENT EXECUTIVE**

1. In a democratic country, two categories make up the executive. They are Political executive and Permanent executive.
2. Political Executive They are elected by the people for a specific period. They take major decisions. Political leaders fall in these categories.
3. Permanent Executive They are appointed on a long-term basis. They are also known as civil servants. They remain in office even when the ruling party changes. They work under the political executive and assist them for carrying out daily administration.

### **POWERS OF PERMANENT AND POLITICAL EXECUTIVE**

- The political executive has more power than the permanent executive. This is because the political executive is elected by the people and in a democracy will of people is supreme. The political executive exercise the will of the people on their behalf. They are answerable to the people for all consequences of their decisions.
- Permanent executive are more educated and-have expertise on the subject of ministry. For instance, advisor of the finance ministry know more about economics than the finance minister.
- But still decision of the finance minister will be the final. Political executive call take advice of the permanent executive arid then decide the overall framework and objectives of the policy to be implemented.

### **PRIME MINISTER**

The Prime Minister is the head of the government and actually exercises all the government powers. He is the most important political institution in the country.

### **APPOINTMENT OF PRIME MINISTER**

There is no direct election to the post of the Prime Minister. The President appoints the leader of the majority party or the coalition of parties that

commands a majority in the Lok Sabha as a Prime Minister. In case, no single party gets a majority, the President appoints the person most likely to secure majority support.

**Collective Responsibility** For any decision or action of the Cabinet, the Council of Ministers is collectively responsible. If any of the Cabinet decisions is not approved by the Parliament, the entire Council of Ministers has to resign.

### **TENURE OF PRIME MINISTER**

The Prime Minister does not have a fixed tenure.

He continues in power as long as he remains the leader of the Majority or coalition party.

### **POWERS OF THE PRIME MINISTER**

The Prime Minister has wide-ranging powers.

These are

1. On the advice of the Prime Minister, the President appoints other ministers.
2. The Prime Minister is free to choose ministers, as long as they are members of Parliament.
3. He chairs and takes most of the decisions in the Cabinet meetings.
4. He coordinates the work of different departments and his decisions are final in case disagreements arise between departments.
5. He exercises general supervision of different ministries and all ministers work under his leadership.
6. He distributes and redistributes work to the ministers.
7. He also has the power to dismiss ministers. When Prime Minister quits, the entire ministry quits.

### **COUNCIL OF MINISTERS**

It is the official name for the body that includes all the ministers. It usually has 60 to 80 ministers of different ranks. The Council of Ministers has collective responsibility.

## **THE COUNCIL OF MINISTERS COMPRISE**

- Cabinet Ministers are usually top-level leaders of the ruling party or parties who are in charge of the major ministries. They meet to take decisions in the name of the Council of Ministers. The cabinet is the inner ring of the Council of Ministers. It comprises about 20 ministers.
- Ministers of State with independent charge are usually in charge of smaller ministries. They participate in the Cabinet meetings only when specially invited.
- Ministers of State are attached to and required to assist Cabinet Ministers.

## **APPOINTMENT OF COUNCIL OF MINISTERS**

After the appointment of the Prime Minister, the President appoints the Council of Minister on the advice of Prime Minister. They are usually from the party or coalition that has the majority in Lok Sabha. Some times, 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 Parliament within 6 months of his appointment.

## **CABINET FORM OF GOVERNMENT**

Since it is not practical for all ministers to meet regularly and discuss everything, the decisions are taken in Cabinet meetings. That is why parliamentary democracy in most countries is often known as the Cabinet form of government.

The secretaries provide the necessary background information to the ministers to take decisions. The Cabinet as a team is assisted by the Cabinet Secretariat. This includes many senior civil servants who try to coordinate the working of different ministries.

## **THE PRESIDENT**

The President is the head of the state. In our political system, the head of the state exercises only nominal powers. Thus, the President is like the Queen of Britain, whose functions are to a large extent ceremonial.

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.

### **APPOINTMENT OF THE PRESIDENT**

- The President of India is elected indirectly, by an electoral college, in accordance with the system of proportional representation by means of the single transferable vote.
- The electoral college consists of
- the elected Members of both Houses of Parliament (MPs).
- the elected Members of the Legislative Assemblies of the states (MLAs),
- the elected Members of the Legislative Assemblies (MLAs) of Union Territories of Delhi and Puducherry.
- A candidate standing for President's post has to get a majority of votes to win the election. This ensures that the President can be seen to represent the entire nation. The President can never claim the kind of direct popular mandate that the Prime Minister can. This ensures that he remains only a nominal executive.

### **THE PRESIDENTIAL SYSTEM**

1. Presidents all over the world are not always nominal executives like the President of India. The US President is directly elected by the people. He personally chooses and appoints all ministers.
2. The lawmaking is still done by the Legislature (called the Congress in the US), but the President can veto any law. Most importantly the US President does not need the support of the majority of members in the Congress and neither is he answerable to them. The President has a fixed tenure of 4 years and completes it even if his party does not have a majority in Congress.
3. 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.

### **POWERS OF THE PRESIDENT**

The President enjoys the following powers

- All governmental activities take 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 Commissioners, Ambassadors to other countries, etc.
- Electoral College A specially constituted elected body to elect the President and Vice-President of India.
- 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 has emergency powers i.e. powers to deal with an unexpected and critical situation, e.g. power to declare emergency or President's rule and issuing an ordinance.

#### **POWER TO APPOINT PRIME MINISTER**

President appoints Prime Minister. The leader of the party or coalition of parties who secures a clear majority in the Lok Sabha elections is appointed as Prime Minister. When no party or coalition gets a majority in the Lok Sabha, the President exercises her discretion and appoints a leader who in her opinion can muster majority support in the Lok Sabha.

#### **LIMITATION ON THE POWER OF THE PRESIDENT**

In spite of these powers, there is a limitation on the powers of the President. He can exercise all these powers only on the advice of the Council of Ministers. The President can ask the Council of Ministers to reconsider its advice. But if the same advice is given again, the President is bound to act according to it. Similarly, 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 some time and send the bill back to the Parliament for reconsideration. But if the Parliament passes the bill again, the President has to sign it.

#### **THE JUDICIARY**

- Judiciary refers to an institution empowered to administer justice and provide a mechanism for the resolution of legal disputes. 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 and Subordinate Courts in the states, District Courts and the courts at the local level and Lok Adalats. India has an integrated or unified judiciary. It means that the Supreme Court controls the judicial administration in the country. Its decisions are binding on all other courts of the country.

### **INDEPENDENCE OF JUDICIARY**

It means that judiciary 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 political party in power. That's why all modern democracies including India have courts that are independent of the legislature and the executive.

### **APPOINTMENT OF JUDGES OF SUPREME COURT AND HIGH COURTS**

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. The senior judges of the Supreme Court select the new judges of the Supreme Court and the High Courts. There is, very little scope of interference by the political executive. The senior most judge of the Supreme Court is usually appointed the Chief Justice.

### **REMOVAL OF A JUDGE OF SUPREME COURT AND HIGH COURT**

- Once a person is appointed as judge of the Supreme Court or the High Court, it is nearly impossible to remove him or her from that position. It is as difficult as removing the President of India.
- A judge can be removed only by an impeachment motion passed separately by two-thirds members of the two houses of the Parliament. It has never happened in the history of Indian democracy.

### **POWERS OF THE SUPREME COURT**

The Supreme Court can take up any dispute

1. between citizens of the country
2. between citizens and government
3. between two or more State Governments
4. between governments at the union and state level

## **ROLE OF THE SUPREME COURT AND THE HIGH COURTS**

- The Supreme Court and the High Courts have the power to interpret the constitution of the country. They can declare invalid any law of the legislature or the actions of the executive, whether at the union level or state level if they find such 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.
- The Supreme Court of India was also ruled that the core or basic principles of the. The constitution cannot be changed by Parliament.

## **JUDICIARY AS THE HIGHEST AUTHORITY**

- The powers and the independence of the Indian judiciary allow it to act as the guardian of the Fundamental Rights. Anyone can approach the courts if the public interest is hurt by the actions of the government. This is called Public Interest Litigation (PIL).
- 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.

## **SUMMARY**

- There are two categories of executive i.e. permanent executive and political executive.
- The political executive is more powerful than the permanent executive.
- The Prime Minister is the head, of the government and actually exercises all the government powers.

- The leader of the majority party or coalition is appointed the Prime Minister by the President.
- The Prime Minister does not have a fixed tenure. He continues in power until he has majority.
- The Prime Minister has wide-ranging powers. He advises the President to appoint the other ministers.
- The Council of Ministers is the official name for the body that includes cabinet ministers, ministers of state with independent charge and ministers of state.
- The President is the head of the state and exercises only nominal powers.
- The President is indirectly elected by an electoral college in accordance with the system of proportional representation.
- All the courts at different levels in a country put together is called integrated judiciary.
- The powers and the independence of the Judiciary allow it to act as the guardian of the Fundamental Rights.
- Through Public Interest Litigation (PIL) anyone can approach the courts if public interest is hurt by the actions of. Government.
- In a democracy, the rulers have to work with and within institution and in this process, they cross across three institutions : Legislature, Executive and Judiciary that play a key role in major decisions.
- A major policy decision is taken through a government order. An order, issued by Government is called an Office Memorandum (OM).
- The major decision involves some major functionaries of our country. They include the President, The Prime Minister and Parliament.
- Parliament is a set of people who are regularly elected by the people, directly or indirectly.
- The importance of Parliament lies in the fact that it is the final authority for making new laws and changing existing laws in our country.
- The Parliament of India consists of two houses i.e. the upper house and the lower house.
- The upper house or Rajya Sabha is indirectly elected and performs special functions.

- The lower house or Lok Sabha is directly elected by people and exercises the real power on behalf of the people.
- The Constitution of India gives some special powers to Rajya Sabha but the Lok Sabha exercises supreme power on most matters.
- Executives take the day-to-day decision but do not exercise Supreme power on behalf of the people.