QUARTER VI

CIVIL SERVICE AND PARLIAMENT

Parliament is the source of all administrative authority. It is unquestionably occupies the paramount place. An analysis of the duties of the Parliament, according to Willoughby is as follows:

1. Determination of Activities to be carried on - Parliament determines the broad lines of activities to be engaged in. The system of great legislative itemization, i.e. of providing many details in regard to administrative activities would result in rigidity, which would make the most effective utilization of equipment, plant, personnel and engineering organization very difficult. Instead of resorting to specification in advance, the Parliament may better exercise its control by calling for full information and reports regarding the general grant of legislative power. On the subject of legislative responsibility, White has observed "Two Reasons may be suggested for the partial failure of state legislatures to their dealings with administration. On the one hand, they have often attempted too much; on the other, they have sacrificed long-run considerations to immediate, local and personal advantage."
He suggests the Parliament may become more effective organs of control by requiring the administrative agencies to maintain an "operations audit."

2. Determination of Administrative agencies and organs - According to Millet the Parliament is the architect of organizational structure and has an important role in the reorganization of the administrative branch. But in countries with Parliamentary form of Government, this important power in the hands of cabinet.

3. Determination of Personnel - There are two kinds of personnel - (i) The directing personnel (ii) employees proper. In our country the Union and state parliament have powers to enact legislation with regard to the creation of certain classes of all India, Central and State Services. The ministers are directly responsible to the legislature, but all other officers and employees are governed by constitutional provisions or civil service rules and regulations. The Parliament only control their conditions of service and numbers through general statutes and appropriations.

4. Determination of rules of procedure - There are two kinds of rules - (i) Those affecting the rights and interests of persons outside the services, i.e., the public, and (ii) those which have to do with internal
operations of the services themselves. Since the former rules affect personal and property rights of citizens, they should be governed by the provisions of law - and rules made under it. But in regard to the latter category it is desirable that the services have enough discretion to regulate their internal matters. Over these the legislature can exercise its control through a proper system of accounts, reports and audit, etc.

5. **Examination of grant of funds**

This is one of the most important functions of legislatures. It is through the device of the budget that the legislature exercises most of its control over administration. Adoption of the Budget system is an important feature of modern Constitutional governments.

6. **Determination of means for legislative supervision and control**

As has been pointed that any one authority in regard to administration is vested in legislature, but instead of directly exercising the whole of this authority in respect of supervision and control, it grants much of it to the Chief Executive. However, according to Willoughby, the legislature can employ various means for the proper exercise of its authority - (i) through enforcing the keeping of proper records (ii) Submission of reports
giving a full account of their acts, (iii) detailed account of all financial matters (iv) Audit of financial accounts (v) Provision for the consideration of administrative and financial reports, (vi) Calling for information as to the acts done by the officials and (vii) Ordering special investigations or enquiries of a comprehensive character.

Thus important duties of the legislature are as follows:

(1) Legislature decide what tasks of the state will be assigned to what agencies. Legislatures by statutes lay down main lines of substantive policies and define the methods of procedure to be employed by the administrative authority. Parliament prescribes the limits and functions of the administrative authority.

(2) It provides money for various administrative activities and ensures the legality and propriety of expenditure made by different administrative departments.

(3) Parliament appropriates funds for every administrative programme, and through audit they ensure that funds have been properly used by the administrative authorities.
(4) Parliament sometimes lays down procedures, especially where important private interests are affected.

(5) Parliaments confer powers on the administrative authorities and impose such limitations on the exercise of power as they deem wise. Acts of Parliament fix the limits of power which may be exercised by administrative agencies and often the manner of its exercise.

(6) Parliament can investigate the working of any administrative agency through its committee.

(7) In this way by these above workings Indian Parliament indirectly exercises control over civil servants through the instrumentality of ministers. Parliament employs the following methods for the exercise of control over civil services.

(1) Members of the parliament can put questions to the ministers about the working of their department.

(2) Members of the parliament can debate and discuss the working of any department.

(3) Motion for adjournment on a matter of public importance provides an opportunity to the members to discuss the working of any department.
(4) Discuss can take place on a matter of public interest.

(5) Debates take place on bills.

(6) Parliament exercises control through its committees.

Let us examine how these methods help the Parliament to exercise control over civil services.

(1) Questions keep civil servants on their toes and alert. Many questions are put to call the bureaucracy to account. Questions offer an opportunity to bring to immediate public attention any phase of administrative policy of activity. Said Mr. Gaitskell: "Anybody who has ever worked in a civil servant department, would agree with me that if there is one major thing which leads civil servants to be excessively cautious, timid and careful and to keep records which outside the civil service would be regarded as unnecessary, it is the fear of the Parliamentary question. Every action may provoke a question, every question an adjournment debate, and every adjournment a full dress debate. Parliamentary questions can be ranked with trial by Jury and the writ of Habeas Corpus, as a Palladium of
individually's liberty against the evils of public Administration." (Civil Servants) Valley of questions are put to the ministers concerning the day to day working of their departments. These questions are connected to the civil servants.

(2) Through debates and discussions Parliament examines and scrutinises administrative activities of the various governmental agencies. At the time of considering demand for grants concerning various departments, Parliament examines, scrutinises and reviews the working of the whole department. Though civil servants know about the prefect demands of department, parliament keep them alert. "In Brief, by question and debate, administration is kept under constant and continuous review. The most trivial detail may be fraught with enormous consequences as the opposition utilises its whole time in spotting the executives weak points, and once it catches them, it has boundless opportunities to hammer them constantly."

(3) Audit has been described as one of the principal historic means of holding public officials to account.

(4) Parliamentary Committees exercise great control over Administration. They examine and scrutinise the working of Administration. In India, Public Accounts Committee and Estimates Committee, are two very important financial committees of the Parliament. They exercise great control over Administration. Public accounts committee has to "Scrubtisise the Appropriation accounts of the Govt. of India and the report of the Comptroller and Auditor General thereof, and it has to point out whether money was spent legally, honestly or not." The Estimates Committee, after reviewing the organization of the whole department, suggests economies in expenditure. The Committee on Assurances scrutinises the assurances, promises, undertakings etc., given by the ministers from time to time. On the floor of the House and the Committee has to report on (a) the extent to which such assurances, promises, undertakings etc. have been implemented, (b) where implemented whether such implementations has taken place within the minimum time necessary for the purpose," according to M.C. Kaul.
"This Committee has helped not only to keep vigil on the administrative efficiency, but has also helped in removing many of the defects inherent in the previous system. The ministers now are careful in giving promises and the administration is prompt enough to action on the promises given. . . . . The various ministries of the Govt, are now conscious of their duties towards Parliament."

Except above written control Parliament due to social, political and economic changes the necessity for an extensive delegation of Parliamentary powers has arisen. Act after Act is being placed up on the statute Book delegating large Parliamentary powers.

Due to the impact of Science and technology, the functions of the State are fast expanding. Parliament finds, itself increasingly engaged in legislation which has for its conscious aim the regulation of the day to day affairs of the community and now intervenes in matters formerly thought to be entirely outside its scope. Due to the enormous increase in the functions of the State delegated legislation has become a necessity. Legislatures of today are overworked. If they want to perform their duties efficiently, the only course open to them is to delegate...
their authority. Parliament passes a law in outlines, and delegates the authority to fill in the details of the law to the Department concerned. Thus Parliament confines itself to major policy matters, and minor matters of detail are left to the Department concerned.

Parliament is not properly equipped to deal in detail with many of the technical matters which are subject of subordinate legislation and from which for the most part political considerations are absent. Concerning technical matters Parliament passes a law in outlines, and delegates the authority to complete the details to the agency which is technically equipped for it. These are the civil servants.

Parliament is always short of time, so the only course open to it is to delegate some of its authority to other agencies.

Laws require alterations with the change of times. Parliament cannot make rapid changes because it does not meet continuously. So the authority to make changes in the details of the law is delegated to the Departments concerned civil servants.

Rules framed under the Act of the Parliament can be better adapted to the local and special circumstances, if the authority to frame these rules is given to the
local and special circumstances, if the authority to frame these rules is given to the departments concerned. Due to the growing functions of the State, the adoption of the system of confining the attention of Parliament to material provisions only, and leaving details to be settled departmentally, is probably the only way in which parliamentary government can as respects its legislative functions be satisfactorily carried on.

These advantages are summarized by Professor Hart in the following form—

1. Freed from concern with details, the Parliament can concentrate its attention and that of the Public upon the enactment of the fundamentals of policy, and is thus strengthened as the representative organ of Govt.

2. The legislature also has additional time in which it may investigate the manner in which administrative authorities have concretized and enforced its policies.

3. Since rules are more easily amended than statutes, it becomes easier to correct mistakes and to meet changing conditions, if the difficulty concerns details rather than basic policy.
4. The administrator is saved from a dilemma that he often faces when his hands are tied by the red tape of legislative details; he does not have to choose between defeating the central purpose of the statute by trying to work the unworkable, and evading the letter of the law.

5. The administrator is the one who, by constantly rubbing elbows with his particular problems, can by trial and error work out the specific regulations best calculated to attain the statutory objective.

6. In working out the specifics of policy, a bureaucracy is ideally, subject to political responsibility with respect to discretionary matter, and to professional responsibility with respect to technical matter.

7. If discretion in particular cases is untrammeled, it is more liable to abuse than if statutory generalities are made more specific and concrete before they are applied to individual situations.

8. Interpretative regulations are a means of increasing the certainty of the law, especially if the statute provides that no civil or criminal liability shall apply to any act done or omitted in good faith in conformity with such interpretations, notwithstanding that, after such an act or omission, such interpretations are held invalid by the Courts.
9. Contingent legislation furnishes a means by which a policy can be blocked out by the legislature and its coming into operation be made dependent upon unpredictable future contingencies, such as the action of a foreign government.

Thus clear it is that civil service receives the power of law-making from the Parliament by this delegated legislation. But it does not mean that it is independent in this delegated legislation, and do as he likes. So following safeguards are provided against growing new despotism, so that delegated legislation may not lead to the dictatorship of the bureaucracy.

Delegation is always to a responsible authority i.e. a minister not civil servant, who is responsible to the Parliament. Parliament delegates its authority, only to an agency or department which is under its control. Parliament precisely defines the limits of the delegated legislative power, and if those limits are overstepped, courts are there to safeguard the citizen's rights. So Parliament provides that the exercise of delegated power can be revoked.

There is a Committee on subordinate legislation to scrutinize and report to the house whether the powers to make regulations, rules, sub-rules, bye-laws etc. conferred by the constitution or delegated by the Parliament - are
being properly exercised within such delegation. The committee consists of fifteen persons who are nominated by the speaker for a period of one year. Each regulation, rule, sub-rule, bye-law etc., framed in pursuance of the legislative functions delegated by Parliament to a subordinate authority, shall be laid before the house and published in the Gazette immediately after it is promulgated. The duties of the Committee are

After each such order referred to in rule 349 is laid before the House, the Committee shall, in particular, consider -

(i) Whether it is in accord with the general objects of the Constitution or the act pursuant to which it is made;

(ii) Whether it contains matter which in the opinion of the committee should more properly be dealt with in an act of Parliament.

(iii) Whether it contains imposition of any tax.

(iv) Whether it directly or indirectly bars the jurisdiction of the courts;

(v) Whether it gives retrospective effect to any of the provisions in respect of which the constitution or the Act does not expressly give any such power.

(vi) Whether it involves expenditure from the consolidated fund of India or the public revenues,
(vii) Whether it appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made.

(viii) Whether there appears to have been unjustifiable delay in its publication or in laying it before Parliament.

(ix) Whether for any reason its form or purport calls for any elucidation.

Committee shall submit its report to the Parliament. It can express its opinion that any order may be annulled wholly or in part or may be amended in any respect."1

"Thus, given the present control of the house by the Cabinet, and the present party system, control means, in practice, discussion, interrogation, the airing of grievances and the very occasional wringing iron a minister of some small concession."

Thus clear it is by above safeguards that delegated legislation (civil service) is directly related to the Acts of Parliament, related as child to parent, a growing child called upon to relieve the parent of the strain of over work and capable of attending to minor matters while the parent manages the main business."11 Parliament shall get more time for the consideration of more serious questions involved in legislation, without caring for the minor details.

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Rules 317 - 322.


(11) Cecil T. Carr, - Delegated Legislation, p.2

Report of the Committee on Ministers Powers. p.32
"The truth is', said the Report of the Committee on
Minister's powers, "That if Parliament were not willing to
delgate law making power, Parliament would be unable to
pass the kind and quantity of legislation which modern
public opinion requires......"

Seeing of the above controls of the Parliament we can
say that Parliament should not exercise details control
over day to day working of Administration. Parliament should
delate power to the administrative officers (civil servants),
it should be eternally vigilant concerning the use of
power. It should check the civil servants where they misuse
their power. But legislative control in detail runs the
risk of causing administrative paralysis. Parliament should
have confidence over civil servants. John Stuart Mill also
points out the limits of Parliamentary control over
Administration. J. S. Mill in his Chapter "Of the proper functions
of representative bodies" observed - "Instead of the
function of governing (i.e. administering), which it is
radically unfit for, the proper office of a representative
assembly is to watch and control the Govt., to throw the
light of publicity n its acts, to compel a full exposition
and justification of all of them which any one considers
questionable; to censure them if found condemnable, and,
if the men who compose the Govt. abuse their trust, or
fulfil it in a manner which conflicts with the deliberate
sense of the nation, to expel them from office, and either
expressly or virtually appoint their successor ...... This is surely ample power and security enough for the liberty of a nation ...... Nothing but the restriction of the function of representative bodies within these rational limits will enable the benefits of popular control to be enjoyed in conjunction with the no less important requisites (growing ever more important as human affairs increase in scale and in complexity) of skilled legislation and Administration."

In the words of Prof. Laske - ..... "there is every thing to be said for, and little effective to be said against, the process of delegated legislation. Anyone who examines the kind of subject-matter with which it deals, will find that it saves a good deal of valuable parliamentary time which can be better used for other matters. An extension of the list of poisons, a change in the schedule of fares for taxi-cabs in London, these, to take typical illustrations of the use of regulatory powers, are not really a threat to our freedom if they are done, under suitable safeguards, by a body of ministers, rather than by the House itself. The vital thing is that Parliament should be in a position to take objection to any use of the power when it deems fit, and that it should be so able to examine what is done in its name as to make it certain that nothing to which objection can be taken escapes from its purview. Thus the

(1) Essay on Representative Govt. p. 185
system of delegated legislation is an elementary procedural convenience essential to the positive state."

There is a necessity for a change in the thinking of legislators who suspect every action of civil servants. Indian Parliament distrusts the civil servants and has not realized the necessity and advantages of delegation.

Finally, Parliament is the Chief citadel of opposition to delegation of powers, the need for which is the worst shortcoming of Indian Administration. Parliament's reluctance to delegate its powers in detail, as it is essential to do if Parliamentary powers are to be important and positive, discourages ministers from delegating their powers, discourages Secretaries from delegating their powers. The critical references this writer has read in Parliamentary debates to "Government by Joint Secretaries" strike him as alarming. What India needs more than anything else, what Parliament needs most, is more Govt. by Joint Secretaries, more Govt. by Deputy Secretaries, more Govt. by Under Secretaries, and more Govt. by Managing Directors and their subordinates. This Govt. by Managing Directors and their subordinates. This is the only way in which there can be more Government altogether and more achievement for Parliament to give general guidance to.

Concern by members of Parliament is shown over the establishment of relatively autonomous enterprises. I have

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(1) Prof. J.T. Laski - Parliamentary Govt. in England, p. 354-52
never heard of an instance in which democratic Govt. could not and did not control any such enterprises in any way really important to Government. Parliament needs to become sensitive to the necessity of operating on a high level. In respect of administration it almost uniformly functions on a low level. This is not surprising; Legislatures everywhere tend to elevate their functions slowly, and everywhere are least competent when they attempt to deal with specifics in administration. But I have seen less consciousness of this than of other great needs in the Indian Governmental situation. The shift from an agitational function directed against Govt. to a positive responsibility for the large scale operations of a dynamic Govt. has naturally been slowest here among parliamentarians; it is a difficult shift to make. The leg in this necessary shift entails a lingering distrusts of the bureaucracy, and this is hostile to the achievement of the system of delegation necessary to speed and magnify action.

"Delegation enlarges and enhances responsibility. This dictum Parliament needs much to ponder."

I am inclined to suggest that the simplest way in which Parliament could reverse its influence on administration from a negative one to a positive one would be for it to stop looking for things to criticize and to begin looking for things to praise. It would then quickly appear, one would hope that what is praiseworthy is not small, literal
compliance with old, detailed procedures but courageous new ways of doing things, praise should be given for actions providing examples of courage, initiative and imagination, and for generally able performance. However, one is led to fear that at the hands of Parliament even this approach would degenerate into something like the American practice of giving awards for single new ideas, notably for proposals, which would effect small savings. The beneficial effect of this is small Parliamentary concern should be to identify and support generally generally desirable arrangement and overall good results. What is needed here, I think is a heightened recognition of the utter dependence of Parliament upon administration for any actual achievement of its own purposes. In the British system awarding of high honours to British Civil Servants has been most the valuable, although even there the awards system has never been carried out nearly for enough to give appropriate lesser recognition to outstanding subordinate personnel. But the point is that in Britain the Public Service has high standing with Parliament and public. But Parliament tends to be campy, unappreciative and miserly.

Indian leadership has had the tremendous problem of shifting from the negative, anti-governmental attitude that was necessary to the drive for independence to a positive, operating, institutional responsibility
appropriate and necessary to programme achievements planned by independent and revolutionary India. The shift from participation in colonial rule to participation in India's own rule was never one-twentieth as difficult for the civil servants as for the parliamentarians, and this shift was reality made long ago. A strange but logical result of parliamentary distinct of the civil servants has been to confine them to the rigid process of colonial administration which greatly reduce their capacity to serve the great policy objectives of the new India. The civil service is the essential tool by which action can be carried forward; if it is used with lack of confidence its actions will be lacking in effectiveness.

If it is at all possible to reduce to a few essentials the question of whether India will succeed in its high endeavors, I should attempt to emphasize two essentials by stating them in two questions: "Will India be able to maintain and develop its national unity and strength in the face of its linguistic divisions and its extra-ordinary national 'courage upon the states for a large part of its Administration?' "Will the people and the Parliament be sufficiently willing to pay enough and to give through delegation sufficient scope for the discretion and wisdom providing the kind of public service of performance necessary for administrative effectiveness?"
In the long run India will get in Administration only what she pays for and what she provides scope for. If India confines the bureaucracy to small scope she will confine the nation to small achievements."

Parliamentary control over administration is a necessity to check the uncontrolled evils of bureaucracy but detailed interference in Administration by the legislature is uncoiled for. The administrators must have the power and authority to administer. The functions and responsibilities of the legislature and executive branches of the Govt. should be clearly defined and demarcated. Legislature should correct abuses in Administration, but should not try to administer the country itself. Legislature should not lay down detailed rules for internal administration of the organization that it becomes difficult for the administrators to take any initiative. Administrators should also try to gain the confidence and goodwill of the legislature. It can be done if administrators exert more efforts to keep legislators informed of the affairs of state and in turn, to inform themselves of the view of legislators. The legislature should also realize that "the details of the business of Government have escaped the competence of legislative committees and Chairman, the possibility of deciding policy by settling details, once perhaps feasible has disappeared;
and in the future, legislatures perse once must deal with administration on the basis of principle and generality if they are to deal with it effectively and in the public interest."