

THE NEW AND DARK INTERPRETATIONS OF 'WE THE PEOPLE'

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'The Constitution does not define 'people'. Its concern is about citizens' | Photo Credit: Getty Images/iStockphoto

The raging controversy over the very meaning of 'We the People', after the [speech made by the Vice-President of India and Chairman, Rajya Sabha, Jagdeep Dhankhar](#) at the 83rd all India conference of presiding officers' in Jaipur, Rajasthan, on January 11, needs a closer look. With its particular reference to the judiciary, Mr. Dhankhar's speech was of the view that 'We the People' essentially gives primacy to elected members of Parliament and the State legislatures.

The Speaker of Lok Sabha supported Mr. Dhankhar's view that the separation of powers (as enshrined in the Constitution) gives this primacy. Expatiating on this theme, Mr. Dhankhar implied that the separation of powers does not equate the three pillars of democracy: Parliament, judiciary and the executive. In his view (although he did not explicitly say this), as the judiciary and the executive are appointed and not elected directly by the people, they are inferior.

Let us first sort out the meaning of 'We the People'. The Constitution does not define 'people'. Its concern is about citizens and not any group or a particular institution. There are people in the judiciary, in the executive and in most other constitutional institutions. There are also those in the military, the police, public enterprise and the vast private enterprise. They are all people no less. To identify representatives in the legislature to be the sole representatives of the people is a travesty. Apart from being enshrined in the Constitution, the theory of a separation of powers is basic to any democratic society, more than the letter of the Constitution. It is a case of staggering irony that over seven decades after Independence, the Indian nation is being subject to a re-education of what the essence of democracy is, from a person who as Governor, caused innumerable problems for the elected government of West Bengal.

Since the issue of primacy of Parliament along with the judiciary and the executive came into the discussion, let us look at two countries with which Indians are familiar. In the United States, the President has the power to appoint judges, although this should be endorsed by Congress. But the President is directly elected by the people and has prerogatives in several issues which do not apply to a parliamentary democracy. The Prime Minister-in-cabinet does not have the powers of the U.S. President. And hence the possibility of a judicial review to check the

suitability or otherwise of the candidates nominated.

In the case of the United Kingdom, it is run by time-honoured conventions and laws passed by the House of Commons. It does not have a written Constitution which gives judicial review. But strong conventions are in place in spite of the primacy of Parliament. Conventions in the United Kingdom have an inviolable tradition. Laws can be changed, violated and repealed. Even in Parliament, the Speaker of the House of Commons is elected, but becomes a non-party man, choosing when to retire from office.

In India too, the first two Speakers, G.V. Mavalankar and M. Ananthasayanam Ayyangar and later Neelam Sanjiva Reddy resigned from the ruling party to give the entire Parliament a sense of impartiality in ensuring a proper place for minority parties. The point is that in the United Kingdom, the House of Commons retains the Speaker if he continues to hold office. This, alas, does not happen in India, in spite of the first two Speakers of the Lok Sabha having tried to set a convention. This lack of convention has drastically affected the running of Parliament. The reluctance to honour conventions made our laws and Constitution strive for greater specificity, often leading to quibbling in language and meaning.

Democracies cannot be run only by the laws passed in representative Assemblies. They need conventions. B.R. Ambedkar realised that Orientals cannot be trusted with conventions. Unless conventions are solidified into constituent laws and bound by strong threads, institutions may even be destroyed, endangering the very purpose of a Constitution protecting the citizen. Indeed, there is a price to be paid converting conventions into law and B.R. Ambedkar knew it. Today's onslaught on the judiciary is aimed at a powerful constitutional authority which is, by and large, refusing to deviate from its constitutional responsibilities. The fate of the Election Commission of India, independent investigating agencies and the civil service and police are a classic example of a dereliction of constitutional and other legal responsibilities.

The basic structure of the Indian Constitution, as recognised by the Supreme Court of India, is to be protected by it, in spite of any over-reach by the legislature. We can take the case of the executive in relation to government. Mr. Dhankhar, when he was Governor and his ruling party appointed colleagues, over-rode State legislatures with impunity, by not approving Bills or delaying them causing them to lapse into nullity. Where is the power of the people as represented by the legislature?

There is a virtual war in the country now between elected governments in States and the Governors appointed by the Centre, which has brought into focus the question whether we need the institution of Governors in the first place. The Constitution does not intend Governors to be subordinates to the central government or even as detractors of the legitimacy of States. The dangerous portent now is that the Centre consciously feels that it is superior to the States and their Governors are its proxies. This goes against the very dignity of the people of a State as inferior to a higher power outside their State, the constitutional validity of which rightly needs the judiciary as the final judge.

In other words, the separation of powers acceptable to the Centre is not applied to the States, where an appointed Governor can defy not only the legislature but also the elected government. Apparently, members of the ruling party members are pushing for greater centralisation not only within constitutional institutions at the Centre but also in States which are ruled by parties other than the national ruling party.

When there is a ruling party determined to dominate States both explicitly and in stealth, there will be strife and conflict endangering the very process of governance. Instead of chipping away at a Constitution framed by the best minds of the Independence movement generation, it will be

more honest (sic) to go for a Constituent Assembly and seek a more totalitarian state — far from the ideals of democracy enshrined in the Constitution. If the people of India accept such devastating change, so be it. The determination with which the ruling party is approaching the majority in the country will only usher in divisive conflicts between religions, States and regions. Sadly, India will be just another Russia, China or Turkey.

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