

NONE INCLUDING THE JUDICIARY IS SUPREME, ONLY THE CONSTITUTION IS; ASSERTS THE VICE PRESIDENT

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

Vice President of India and Chairman of Rajya Sabha Shri M.Venkaiah Naidu today asserted that none of the three organs of the 'State' can claim to be supreme as only the Constitution is supreme and the legislature, the executive and the judiciary are bound to work within the respective domains as defined in the Constitution. Addressing the inaugural session of the 80th All India Conference of Presiding Officers at Kevadia, Gujarat, Shri Naidu urged the three organs of State to work in harmony guided by the spirit of mutual respect, responsibility and restraint for the cause of nation building. He expressed concern over the instances of each of the three organs encroaching into the domain of others.

Also expressing concern over the functioning of the legislatures, Shri Naidu, referring to the Presiding Officers as the 'high priests of temples of democracy', urged them to ensure the sanctity of these temples. Stating that legislatures are the cornerstone of democracy that provide the basis for the actions of both the executive and the judiciary, Shri Naidu referred to the public opinion turning against the law making bodies and the legislators over the years. He noted that frequent disruptions, conduct of legislators both within and outside the chambers of the Houses, rising number of law makers with criminal background, rising money power in elections, flaunting of power by legislators are some of the reasons for this negative perception.

The Vice President and Chairman of Rajya Sabha said "Caste, Cash and Criminality replacing Conduct, Character and Calibre as the criteria for selection of candidates has been eroding the stature of legislators and their members". Shri Naidu urged the political parties to introspect about the present state of affairs to enhance the standing of legislatures and legislators and also to ensure disruption free functioning of legislatures.

Chairman of Rajya Sabha Shri Naidu, in particular, referred to the erosion in the 'oversight' (ensuring accountability of the executive to the legislature) function of legislatures due to disruptions. He revealed that even after the Question Hour was shifted to 12.00 noon from 11.00 am in the Rajya Sabha in 2014, about 60% of the precious Question Hour time is still being lost due to disruptions and forced adjournments. The Chairman informed that during 2010-14, only 32.39% of question time could be made use of in the Rajya Sabha further to which the Question Hour was shifted to 12.00 noon towards the end of 2014. He lamented that even after this rescheduling, in the very next year i.e 2015, only 26.25% of question time was availed. He further informed that during the five year period of 2015-19, utilisation of question time increased to 42.39% which in effect means that about 60% of the time available to take the Government to task as part of the 'oversight' function of the House has been lost.

Shri Naidu lamented that the valuable Question Hour time is being wasted in the Rajya Sabha even after both the Houses of Parliament passed unanimous resolutions on the occasion of Golden Jubilee of the country's independence in 1997 under which the Question Hour was not to be disrupted, members were not to enter the well of the House etc. He expressed serious concern over the trend of declining use of Question Hour over the last 30 years.

Shri Naidu said; "Decency, Decorum and Dignity of the temples of democracy will be upheld only through adherence to the other three 'Ds' namely, Debate, Discuss and Decide".

Noting that the Department Related Parliamentary Standing Committees of Parliament, introduced in 1993 have been making a significant contribution by undertaking on behalf of the Parliament, detailed scrutiny of Bills, Demands for Grants and other issues chosen by the Committees,

Shri Naidu urged the Presiding Officers to ensure introduction of such committee system in all the legislatures of the States. The Chairman referred to the improvement in the functioning of these Committees in respect of attendance, average duration of meetings etc during 2019-20.

On the issue of harmonious working of the legislature, the executive and the judiciary, the Vice President referred to instances of each one of them crossing the 'lakshmanrekha' in different degree by encroaching into the domain of others in violation of the checks and balances provided in the Constitution.

Quoting some observations of the Supreme Court concerning its domain and powers, Shri Naidu stressed that even the principle of 'first among equals' does not apply to the apex court and only the Constitution is supreme. Shri Naidu said; "We consider our 'State' to be in its best state when each of the three organs of the 'State' perform to the best of its potential in the domains specified for each of them, in pursuit of the mandate defined and in the manner prescribed in the Constitution". It is not desirable for the judiciary to be perceived as acting as 'super executive' or 'super legislature' Shri Naidu stressed.

The Vice President noted that "There have been quite a few judicial pronouncements that gave a distinct impression of an overreach. These actions have resulted in an avoidable blurring of the contours demarcated by the Constitution."

Higher judiciary deciding on Diwali fireworks, banning of use vehicles of certain make after 10 or 15 years, monitoring police investigations, denying the executive any role in the appointment of judges through collegiums, invalidating the National Judicial Appointments Commission Act seeking to enforce accountability and transparency etc were some instances referred to by Shri Naidu as being perceived as instances of judicial overreach.

Following is the full text of the speech –

"Mahamahim Rashtrapati ji, Hon'ble Speaker of Lok Sabha, Respected Presiding Officers of State Legislatures from across the country, friends from media, Brothers and Sisters!

I am indeed delighted to be associated with this distinguished assembly of the Presiding Officers in its 80th edition. I prefer to call the Presiding Officers the 'high priests of the temples of democracy'. You are mandated with upholding the sanctity of the 'sanctum sanctorum' of these temples.

We consider our 'State' to be in its best state when each of the three organs of the 'State' performs to the best of its potential in the domain specified for each of them, in pursuit of the mandate defined and in the manner prescribed in the Constitution. Our Constitution demarcated clear domains for each of these three organs on the lines of separation of powers, though not in a very formalistic manner.

The theory of 'Separation of Powers' by Montesquieu in 1748 had its origins in his genuine concern to avoid autocracy and tyranny if the legislative, executive and judicial powers were to be concentrated in one organ or one individual. Still, the legislative and executive functions continued to be in the same hands till the middle of the 19th century. Ever since separate domains came into being, it has been a saga of frictions and tensions. The case of India since independence is no exception. So, it is appropriate for us to take stock of the harmonious

working of the three organs.

Harmony lies in each organ doing its job without interfering with that of the others. This warrants a spirit of mutual respect, responsibility and restraint. Unfortunately, there have been several instances of crossing the boundaries.

We are familiar with the excesses of the Executive in disregard of their accountability to the Legislature on certain occasions. There have been cases when the Rules framed under the delegated 'Subordinate Legislation' violated the provisions of original legislation by the Parliament. Violation of rights and liberties of citizens by the Executive at times is too visible for comfort.

At times, the Legislature too has tended to cross the line. The 39th Constitution Amendment placing the election of President, Vice President and Prime Minister beyond the scope of judicial scrutiny in the circumstances in 1975 is one such instance.

There have been quite a few judicial pronouncements that gave a distinct impression of an over reach.

These actions have resulted in an avoidable blurring of the contours demarcated by the constitution. They have led to the question as to how the three organs of the State should respect the jurisdictional sanctity enshrined in the Constitution instead of arrogating to themselves a sense of supremacy?

The moot question is does our Constitution envisage any of these three to be 'supreme'?

As early as in 1955, in Ram Jawaya Versus the State of Punjab case, the Supreme Court held that "Our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another". By this, it is logical to conclude that even the principle of 'first among the equals' does not apply to any of the three organs. In the case of P.Ramachandra Rao Versus the State of Karnataka in 2002, the apex court observed that "The Supreme Court does not consider itself to be an imperium in imperio (an empire into an empire) or would function as a despotic branch of the State. Former Chief Justice of India Dr.A.S.Anand held that "In saying that the judiciary is the guardian of the Constitution, it is not implied that the legislature and the executive are not equally to guard the Constitution. For the progress of the nation, however, it is imperative that all of the three wings of the State function in complete harmony".

That quest for harmony is the theme of deliberation at this august assembly.

This quest is not new for all of us in India. Many centuries ago, the Indian sages hoped for a harmonious co-existence. In the Rig Veda, they had said,

"Samani va akutih samana hrdayni vah |

Samanamastu vo mano yatha vah susahasati"

(Let us be driven by a common goal, united by a common commitment and inspired by ennobling thoughts. That will ensure we work together with harmony and in a cheerful environment)

Once each organ has that overarching goal and has the larger public interest in view, the foundation for a synergistic functioning will be laid. That spirit will have to be constantly

protected and nurtured with mutual respect and a high sense of responsibility.

Since independence, the Supreme Court and High Courts have delivered several far reaching verdicts in furtherance of socio-economic objectives besides making correctional interventions. But occasionally, concerns have been raised as to whether they were entering the domains of the legislative and the executive wings. There have been debates as to whether some issues should have been more legitimately left to the other organs of the government. For example, Deepavali fireworks; cess on registration and movement of vehicles from the National Capital

Region through Delhi; banning use of vehicles of certain make after 10 or 15 years; monitoring police investigations; denying the executive any role in the appointment of judges by instituting collegium which is said to be an extra-constitutional body; invalidating the National Judicial Accountability Commission Act seeking to ensure transparency and accountability are being cited as instances of judicial over reach..

So, there are some concerns about the harmony in the working of the three organs of the State. Our Constitution provides for checks and balances to ensure playing by the rules and harmony among the three organs of the States. It is a settled position that the Constitution is supreme and none of the three organs. Since Mahamahim Rashtrapati ji would throw more light on this issue, I would now like to turn to the issues concerning the Presiding Officers and the legislatures.

The Greek philosopher Socrates said that the business of legislatures is serious in nature as they discuss the ways we ought to live. Legislatures are the corner stone of democracy as they provide the basis for the actions of the executive and the judiciary. The judicial review, declared as one of the 'basic features' of our Constitution imposes certain restrictions on the legislatures. Law makers have the liberty of defending their territory even by nullifying judicial decisions if so warranted.

Given the importance of legislatures, the Presiding Officers have a major role to play in furthering the cause of parliamentary democracy. Over the years, the battle of perception has tilted against the legislatures and its members. Frequent disruptions, conduct of legislators both within and outside the chambers, rising number of legislators with criminal background, rising money power in elections, flaunting of power as legislators are some of the reasons for this negative perception.

On the occasion of the Golden Jubilee of our independence in 1997, both the Houses of Parliament have unanimously adopted Resolutions asserting among other things that Question Hour should not be disrupted, members should not rush into the well of the Houses etc. But this is followed more in violation.

Citing frequent disruption of the Question Hour, it was shifted from 11.00 am to 12.00 noon in 2014 in the Rajya Sabha. During 2010-14, only 32.39% of the Question Hour time was made use of while 67.61% of the valuable question time was lost due to disruptions and forced adjournments. But, after the Question Hour was shifted, only 26.25% of question time was availed in the next year i.e 2015. For the five year period of 2015-19, only 41.39% of Question Hour time was made use of though this is an effective instrument to take the government to task by asking important questions for oral replies from the Government which is an important part of the 'oversight' function of the House. In fact, over the last 30 years, utilisation of Question Hour time has been declining. This is certainly a matter of concern.

The Conference of Presiding Officers has been regularly taking stock of the functioning of the legislatures in the country and has been making recommendations for improving their functioning. Based on the discussion in the Bhubaneswar conference of Presiding Officers in

1978 and adoption in the Lucknow Conference in 1985, the system of Department Related Parliamentary Standing Committees (DRSCs) was introduced in 1993. These Committees of Parliament, now numbering 24 have been doing a commendable job by undertaking detailed scrutiny of Bills referred to them, the Demands for Grants and other issues chosen by the Committees. I have been regularly reviewing the performance of the 8 Committees of Rajya Sabha and they have shown substantial improvement during the last three years in terms of attendance, average duration of meetings etc. I urge upon the Presiding Officers to take necessary measures to make operational such Committees in all the legislatures.

In the 'Rig Veda', 'Sabha Adhyaksha' is required to be a person well versed in the matters of State, experienced, astute, not a novice in politics, impartial, learned, righteous, benevolent and mature by advanced age and learning. I urge upon all of you to make good use of these attributes to improve the functioning of respective legislatures. As the high priests of democracy, aided and assisted by the Rules, conventions and earlier rulings of the Chair and your own wisdom and experience, you shall do everything required to uphold the sanctity of the temples of democracy. I am particularly distressed over the state of affairs in several state legislatures.

'Decency, Dignity and Decorum' of the temples of democracy will be upheld only through adherence to three 'Ds' namely, 'Debate, Discus and Decide'. Unabated disruptions seriously erode the standing of legislatures. Lack of harmony in the functioning will seriously erode the legitimacy of all the three organs of the State.

I appreciate the Hon'ble Speaker of Lok Sabha for his personal interest in organising this importance conference close to the 'Statue of Unity' of Sardar Patel and choosing a very relevant theme. Participation of Mahamahim Rashtrapati ji, Vice President and Prime Minister, for the first time in the Conference of Presiding Officers this year is a clear indication of the importance accorded to the harmonious functioning of the three organs of the State for nation building and the role of Presiding Officers in improving the functioning of the legislatures.

I wish you all a happy Christmas, Happy, Healthy and Prosperous year 2021, Sankranti, Pongal and Lohri. Thank you all!"

MS/DP

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Also expressing concern over the functioning of the legislatures, Shri Naidu, referring to the Presiding Officers as the 'high priests of temples of democracy', urged them to ensure the sanctity of these temples. Stating that legislatures are the cornerstone of democracy that provide the basis for the actions of both the executive and the judiciary, Shri Naidu referred to the public opinion turning against the law making bodies and the legislators over the years. He noted that frequent disruptions, conduct of legislators both within and outside the chambers of the Houses, rising number of law makers with criminal background, rising money power in elections, flaunting of power by legislators are some of the reasons for this negative perception.

The Vice President and Chairman of Rajya Sabha said “Caste, Cash and Criminality replacing Conduct, Character and Calibre as the criteria for selection of candidates has been eroding the stature of legislators and their members”. Shri Naidu urged the political parties to introspect about the present state of affairs to enhance the standing of legislatures and legislators and also to ensure disruption free functioning of legislatures.

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Quoting some observations of the Supreme Court concerning its domain and powers, Shri Naidu stressed that even the principle of ‘first among equals’ does not apply to the apex court and only the Constitution is supreme. Shri Naidu said; “We consider our ‘State’ to be in its best state when each of the three organs of the ‘State’ perform to the best of its potential in the domains specified for each of them, in pursuit of the mandate defined and in the manner prescribed in the Constitution”. It is not desirable for the judiciary to be perceived as acting as ‘super executive’ or ‘super legislature’ Shri Naidu stressed.

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The theory of ‘Separation of Powers’ by Montesquieu in 1748 had its origins in his genuine concern to avoid autocracy and tyranny if the legislative, executive and judicial powers were to be concentrated in one organ or one individual. Still, the legislative and executive functions continued to be in the same hands till the middle of the 19th century. Ever since separate domains came into being, it has been a saga of frictions and tensions. The case of India since independence is no exception. So, it is appropriate for us to take stock of the harmonious working of the three organs.

Harmony lies in each organ doing its job without interfering with that of the others. This warrants a spirit of mutual respect, responsibility and restraint. Unfortunately, there have been several instances of crossing the boundaries.

We are familiar with the excesses of the Executive in disregard of their accountability to the Legislature on certain occasions. There have been cases when the Rules framed under the delegated ‘Subordinate Legislation’ violated the provisions of original legislation by the Parliament. Violation of rights and liberties of citizens by the Executive at times is too visible for comfort.

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The moot question is does our Constitution envisage any of these three to be ‘supreme’?

As early as in 1955, in Ram Jawaya Versus the State of Punjab case, the Supreme Court held that “Our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another”. By this, it is logical to conclude that even the principle of ‘first among the equals’ does not apply to any of the three organs. In the case of P.Ramachandra Rao Versus the State of Karnataka in 2002, the apex court observed that “The Supreme Court does not consider itself to be an imperium in imperio (an empire into an empire) or would function as a despotic branch of the State. Former Chief Justice of India Dr.A.S.Anand held that “In saying that the judiciary is the guardian of the Constitution, it is not implied that the legislature and the executive are not equally to guard the Constitution. For the progress of the nation, however, it is imperative that all of the three wings of the State function in complete harmony”.

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Region through Delhi; banning use of vehicles of certain make after 10 or 15 years; monitoring police investigations; denying the executive any role in the appointment of judges by instituting collegium which is said to be an extra-constitutional body; invalidating the National Judicial Accountability Commission Act seeking to ensure transparency and accountability are being cited as instances of judicial over reach..

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warranted.

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