

Session : 9

Date : 07-12-2006

Participants : Dasgupta Shri Gurudas, Bhardwaj Shri H.R.

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Title: Shri Gurudas Dasgupta called the attention of the Minister of Law and Justice to the need for harmonious functioning of three organs of the State i.e. Legislature, Judiciary and Executive.

SHRI GURUDAS DASGUPTA (PANSKURA): Sir, I call the attention of the Minister of law and Justice to the following matter of urgent public importance and request that he may make a statement thereon:

“The need for harmonious functioning of three organs of the State i.e. Legislature, Judiciary and Executive.”

THE MINISTER OF LAW AND JUSTICE (SHRI H.R. BHARDWAJ): Sir, the powers of the three organs of the State, i.e., the Executive, the Legislature and the Judiciary have been elaborately provided for in various provisions of the Constitution of India. Part V of the Constitution deals for the Union and Part VI deals for the States. The provisions have built-in checks and balances. The Constitution establishes parliamentary form of Government, in which the Executive is responsible to the elected Legislature. Subject to the fundamental rights, the Legislatures have all the legislative powers, including the amendment to the Constitution; which of course, is further limited by the principles of basic structure. The Judiciary interprets the Constitution and acts as its guardian by keeping all authorities – legislature, executive, administration, judicial and quasi-judicial - within bounds. Each one of the organs is accountable in one form or the other. The checks and balances are functioning in harmony for the common goal of the good of the people, who are the framers of the Constitution.

After coming into force of the Constitution, all the three organs of the State have, by and large, functioned within their determined sphere demarcated by the Constitution. It is a matter of pride for all of us that our democracy is vibrant and alive.

SHRI GURUDAS DASGUPTA : Sir, I must confess that the hon. Minister has given a lame-duck statement. The problems that the country is facing, the problems and concerns which have been fully expressed in this House are not reflected in the statement or the submission that the hon. Minister of Law and Justice has given just now to the House.

Sir, with your kind permission, let me take a legalistic view of the issue 'harmonious functioning of Judiciary, Legislature and Executive'. A society is governed by law and the supremacy of law is well established if the law is treated to be an instrument for social change. When the Indian Constitution was being drafted, the Founding Fathers were confronted with the perspective of emancipating millions of people, crores of people who have been victims of illiteracy, injustice, hunger and under-development during the British Rule. Dr. Ambedkar, the author of the Indian Constitution, had very categorically stated that political democracy is meaningless if social democracy and economic democracy are not there. Indian Constitution recognises the supremacy of people.

The centrality of the wheel of law is best expressed in the Preamble of the Indian Constitutions wherein it is stated that "We, the People of India, ... do hereby adopt, enact and give to ourselves this Constitution." Therefore, the Constitution recognises, rather is based upon the concept of sovereignty of the people and the primacy of the sovereignty of the people is beyond any doubt. Therefore, the three organs of the State should act and be guided by law and not act in an arbitrary way and unlawful way so that millions of people can obtain the protection of law and equity is there in their rights and duties.

Sir, Parliament, of which we are all dignified Members, is elected by the people. I have been talking of the sovereignty of the people. Members of Parliament are elected by the people and Parliament is having the most representative character. That is why, Parliament has been given the most pre-eminent position among the organs of the State. Let there be no doubt about that. Parliament enjoys the pre-eminent position in the power structure of the country, as the Founding Fathers had visualised. On the other hand, the Constitution is the organic law of the country and therefore, it is supposed to give direction to the three organs of the State for bringing about social and economic transformation. It is, again, the people who are in the centre stage.

Sir, I come to the issue. If any organ of the State is vested with excessive power, then the foundation of democracy is threatened and undermined.[\[s12\]](#) The hon. Minister of Parliamentary Affairs may kindly listen to us because it is under whose jurisdiction and whose guidance we seek in this House. ... (*Interruptions*)

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF INFORMATION AND BROADCASTING (SHRI PRIYA RANJAN DASMUNSI): I do not guide him. ... (*Interruptions*)

SHRI GURUDAS DASGUPTA : He guides us, not Parliament. Therefore, I seek his guidance. ...
(Interruptions)

MR. SPEAKER: I think, the Minister is being guided by Prof. Malhotra!

... (Interruptions)

SHRI GURUDAS DASGUPTA : Prof. Malhotra, Deputy Leader of the Opposition has a more important role than us in the House to bring the House in proper perspective.

If excessive power is vested with any organs of the State, then, everybody would say that foundation of democracy is undermined. All of us would agree as to what is the remedy. Remedy is blending of checks and balances of different functions of the organs of the State. The concept of separation of power is the most effective safeguard against any anachronism that may crop up. Parliament being supreme in the making of law and being the supreme law-making body is called upon to initiate and carry forward the process of social transformation. Parliament can do the job within the framework as delineated by Fundamental Rights and Directive Principles of State Policy, which are the two important chapters of the Constitution. The Constitution enjoins upon all the organs of the State – Judiciary, Legislature and Executive – to be sensitive towards the problems of the vulnerable sections of the country. This is the legal background.

What is the reality today? Let me refer to one of the most respected national figures in the country, the first Prime Minister of India, Jawaharlal Nehru. On 10th September, 1949, while speaking in the Constituent Assembly, he declared categorically – with your permission, I am reading out the speech – that we shall honour our pledge within limits, no Judge, no Supreme Court, no Judiciary can stand judgement over the sovereign will of Parliament representing the will of the entire community. If we go round here and there, it may be pointed out.

Many years later, after the historic speech of Jawaharlal Nehru in the Constituent Assembly, Justice Krishna Iyer, another eminent Justice had categorically stated that court cannot act as a third chamber. With your kind permission, let me look into the speech of the Learned Judge of Supreme Court, Shri Krishna Iyer, wherein he had stated – I am quoting – that answers to many socio-economic and political problems lie in Parliament. Problems of socio-economic nature and political nature lie in Parliament - I am quoting - not in the court room but in the polling booth. Hon. Minister of Law will kindly listen to it a little more attentively as to what Justice has further stated. He further stated that misplaced activism strains institutional resources of the court. Another Judge, Justice Katju said: I do not subscribe to the view that Judiciary is running the Government.” I am only quoting from the judgements and the statements they had made. [\[r13\]](#)

Now, I come to the crux. Of late, there have been interventions; interventions are not limited to method of executive order, but interventions on issues of policy which are in the exclusive domain of the legislature; even they are brought under judicial scrutiny. There are instances when even the legislative intent or legislative intention is being subjected to judicial scrutiny.

MR. SPEAKER: I am sorry to interrupt you. The courts are entitled to find out the legislative intent while scrutinizing the law.

SHRI GURUDAS DASGUPTA : Let me finish. Sir, you are an esteemed lawyer. I will bow down my head in deference, but let me conclude.

MR. SPEAKER: It is a very very sensitive subject. I want it to be properly articulated.

SHRI GURUDAS DASGUPTA : I will not be going beyond the limit which is prescribed by the annals of parliamentary system and parliamentary conventions.

Again, I quote hon. Justice Krishna Iyer. He said:

“In the name of judicial activism, modern day judges in India have abandoned the traditional role of neutral referee and they have increasingly resorted to tipping scales of justice in the name of distributive justice. The legitimacy of such actions needs to be critically appraised at the level of judicial fraternity.”

Fali Nariman, one of the most learned jurists of our time says:

“Under the constitutional scheme, social, economic and political aspects of justice are left to the law makers.”

Now, I am referring to three judges. The Supreme Court has given the opinion that we can speak on judgment, but not on the judges; and I am taking recourse to that. The Lok Sabha, in its own wisdom, had taken action against a number of Members on the ground which Lok Sabha thought it to be proper.

MR. SPEAKER: But that is *sub judice*.

SHRI GURUDAS DASGUPTA : I am not going into that.

MR. SPEAKER: Please do not go into that.

SHRI GURUDAS DASGUPTA : But I am only pointing out one thing, that summons were issued against the Speaker; and we all know that.

PROF. VIJAY KUMAR MALHOTRA (SOUTH DELHI): No. There were no summons.

SHRI GURUDAS DASGUPTA : Secondly, in the recent case which you have raised, on sealing the commercial complexes in Delhi, what happened? The apex Court had appointed a Committee to oversee the execution of the judgment. I am again referring to a judicial opinion.

SHRI LAKSHMAN SINGH (RAJGARH): How much more time will you give him, Sir?

MR. SPEAKER: Another 2-3 minutes. Otherwise also, he is the only Member.

... (*Interruptions*)

SHRI GURUDAS DASGUPTA : Sir, let me conclude. ... (*Interruptions*)

MR. SPEAKER: He is right; you will get another 2-3 minutes.

SHRI GURUDAS DASGUPTA : Sir, it is universally accepted; it is a judicial maxim that the court should refrain from adjudicating issues or passing judgment that would involve superintendence by the court itself. Prof. Malhotra has raised this issue in the Parliament.

Thirdly, there was a case pending in a court, while workers and the Government employees in Tamil Nadu were on strike. There was a judgment. But while giving the judgment, a comment was made in general – not relating to the case at all – that there should not be strikes. It is to be informed that not a word was said about the lock outs. I am only saying that I refute the statement of the hon. Minister; there is lack of harmony in the functioning of the Judiciary, Legislative and the Executive. There is lack of harmony.

MR. SPEAKER: May I take the sense of the House please?

PROF. VIJAY KUMAR MALHOTRA : Before you take the sense of the House, we have to say something about it.

MR. SPEAKER: It is not on the merits; Prof. Malhotra, please listen to me; I want to take the sense of the House, not on the merits.

... (*Interruptions*)

MR. SPEAKER: Kindly listen to me. You are right.

... (*Interruptions*)

MR. SPEAKER: Hon. Members, please allow me to regulate. This is the trouble. [\[MSOffice14\]](#)

SHRI GURUDAS DASGUPTA : Sir, I will take just two minutes more.

MR. SPEAKER: I will give you later.

Only one hon. Member has given notice. Subsequently, I have got notices from another 11 hon. Members.

... (*Interruptions*)

MR. SPEAKER: If the House so wishes, can we convert this into a discussion under rule 193?

... (*Interruptions*)

SEVERAL HON. MEMBERS: Yes.

श्री मोहन सिंह (देवरिया) : अध्यक्ष महोदय, सबकी राय है कि इस विषय पर डिबेट करवाइए। ... (ब्यवधान)

इसे नियम 193 में कन्वर्ट कर दीजिए।... (ब्यवधान)

PROF. VIJAY KUMAR MALHOTRA : Sir, I would like to make a request to you. This is a very sensitive matter. Before this matter is discussed in the House, the Prime Minister should call a meeting of leaders of all the parties, have a discussion and bring about some unanimous opinion about it, and then, a discussion can be held here.

MR. SPEAKER: It is a suggestion which you can make.

... (*Interruptions*)

MR. SPEAKER: It is very appropriate. So, I wanted to take a common consent of the House, in view of the importance of the subject.

PROF. VIJAY KUMAR MALHOTRA : This matter cannot be discussed under Calling Attention. It should be discussed in the House in a proper manner; and before that, the Prime Minister must call a meeting of leaders of all the parties.

MR. SPEAKER: That is why, I said that I wanted to have the sense of the House, which is about the procedure – whether it could be converted into a discussion under rule 193. After hearing the views now, we can have a full-fledged discussion later, and not now.

SHRI GURUDAS DASGUPTA : Let me conclude and then, you can do so.

MR. SPEAKER: Okay, you can conclude in another two minutes.

Shri Swain, I will call you. Shri Dasgupta, you will have an opportunity to put your views when we discuss it under rule 193.

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): I have given a notice to discuss the very same subject under rule 193. Unfortunately, it was taken up under Calling Attention. It was on the very same subject. I have written to the hon. Speaker.

MR. SPEAKER: I have done it deliberately – you can make that complaint! I have done it with a deliberate motive! This is the fashion!

... (*Interruptions*)

SHRI VARKALA RADHAKRISHNAN : Sir, I do not know how it happened and the Calling Attention came up!

SHRI GURUDAS DASGUPTA : I am concluding. ... (*Interruptions*)

MR. SPEAKER: Prof. Malhotra, you are telling me this every day. Kindly sit here and decide. I will invite you to come and sit here.

... (*Interruptions*)

प्रो. विजय कुमार मल्होत्रा : किसके खिलाफ कम्प्लेंट करें।

अध्यक्ष महोदय : हमारे ही खिलाफ करते हैं।

श्री गुरुदास दासगुप्त : आपके पास कम्प्लेंट करेंगे।

MR. SPEAKER: This is what is happening in the House. The Chair is the target and there is no respect for the chair. If there is no respect for the Chair, will there be respect for the House?

SHRI GURUDAS DASGUPTA : Sir, may I suggest? Let the Deputy Leader of the Opposition champion the cause of all the under-privileged Members!

Sir, I am concluding.

MR. SPEAKER: You can do it when we discuss it under rule 193.

SHRI GURUDAS DASGUPTA : Let me conclude in two minutes.

I am saying that I feel concerned and the Parliament should feel concerned at the growing trend; and I express that the House should discuss this issue. I feel concerned because due to a number of Public Interest Litigations, some problems are being created, which in my opinion, infringes upon the right of the Parliament, the sovereignty of the people and the right of this House of the People.

MR. SPEAKER: Okay, now, the sense of the House is that it should be converted into a discussion under rule 193. We shall do it later. In the next BAC meeting, we shall fix up the date for that.

SHRI GURUDAS DASGUPTA : Sir, I have the last sentence to make.

I am extremely concerned in the way judicial over-activism is taking place in the country.

MR. SPEAKER: Hon. Members, as I said, we will decide it in the next BAC meeting; by consensus, it is converted and treated as a discussion under rule 193; we will discuss it subsequently.

Now, there is another matter; item no.6, Paper to be laid on the Table is to be taken up. The name of Shri Subodh Kant Sahay was called out earlier; he was not there; I have expressed my annoyance; he has tendered his apology to the House. Therefore, I call him to lay the paper now.

[\[MSOffice15\]](#)
