

Staying away from political thickets

Even under a sovereign Constitution, parliamentary and legislative supremacy in their areas of working must be respected

Former Rajasthan Deputy Chief Minister Sachin Pilot's rebellion against Rajasthan Chief Minister Ashok Gehlot, has crashlanded in the Rajasthan High Court and the Supreme Court of India. Upon Mr. Pilot's invitation in Rajasthan and Rajasthan Assembly Speaker C.P. Joshi's appeal to the Supreme Court, today's judges seem to have rushed in, where their predecessors have feared to tread. There is Constitutional history behind judicial reticence, which is normally expected, in matters involving the working of Parliament and legislatures. This history bears some retelling.

A retelling of the past

Charles Bradlaugh was elected to England's Parliament in 1880. He was an atheist and refused to take oath as a Member of Parliament in the name of god. The format of the parliamentary oath, only provided for swearing in in god's name. The Serjeant of Parliament, one Mr. Gossett, refused to seat Bradlaugh in Parliament without the oath in that form. Bradlaugh appealed to the courts. The courts said they could do nothing. In *Bradlaugh vs Gossett* (1884), a court held the 'decision of the House of Commons in resolving not to allow an elected Member, Bradlaugh, to take the oath, and the actions of the Serjeant at Arms in preventing Bradlaugh from entering the House, were subject to the sole jurisdiction of the House'.

In India, one Keshav Singh was sentenced to a week's imprisonment in 1964 for breach of privilege of the Uttar Pradesh Legislative Assembly. Subsequently, a petition filed by him was listed before the Lucknow Bench of the Allahabad High Court. When the case was called out, the government advocate was not present. The petition was admitted, and as the sentence was only one week, Singh was directed to be released on bail during the pendency of the case. The Assembly took umbrage to this. The order of stay passed by the Bench of two judges was regarded as a breach of their privilege. Soon thereafter, the assembly made an order directing the Marshal of the Assembly to arrest the two judges and produce them before the Bar of the House. These judges approached the full Bench of the Allahabad High Court, which protected them from arrest. According to Shanti Bhushan's recollections, Justice Nasirullah Beg, who had been ordered to be arrested and confined by the marshals of the U.P. Legislative Assembly, was waiting with a loaded gun, ready to shoot down the marshals and protect the honour of the Allahabad High Court.

Hands-off approach

At this stage, the President of India made a presidential reference to the Supreme Court on the relative powers of legislative assemblies and constitutional courts. The Supreme Court, answering the reference, held that there is a broad separation of essential powers of each organ of the State. However, the Court went on to hold that a judge who entertains a petition challenging any order of the legislature imposing any penalty on the petitioner for its contempt "...does not commit contempt of the said legislature and the legislature is not competent to initiate proceedings against that judge".

Ever since, it has generally been a "hands-off" position as far as the courts interfering in the workings of legislative assemblies or Parliament is concerned. The sole exception is under the anti-defection law — after a final order of disqualification has been passed.

This is because, a Constitution bench of the Supreme Court in Kihoto Hollohan's case in 1992 held that the Speaker acting in a disqualification matter acts as a tribunal and is subject to judicial review. However, the same judgment makes it clear that the Court will not intervene at an interim stage.

The majority very clearly held: “Having regard to the constitutional scheme in the Tenth Schedule, judicial review should not cover any stage prior to the making of a decision by the Speakers/Chairmen; and no *quia timet* actions are permissible.”

The same judgment further holds: “The Speakers/Chairmen hold a pivotal position in the scheme of Parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to and do take far reaching decisions in a Parliamentary democracy.”

When the Sachin Pilot episode is considered against this constitutional backdrop, it is clear that a mere issuance of a possible disqualification notice by the Speaker, has been contested in constitutional courts, which have not rejected the challenge at the threshold. Even in routine petitions against notices of proposed administrative actions, courts are reluctant to review at an interim stage. Almost invariably, the petitioner is told to answer the show cause notice and to challenge the final action only.

The Rajasthan High Court however entertained a petition on behalf of 19 MLAs who having ensconced themselves in a resort in a neighbouring State, proceeded to challenge the Speaker’s authority to decide, if they had committed an act of defection. Arguments at length were addressed, almost as though the limitations of the Constitution Bench judgment in *Kihoto Hollohan*, had ceased to apply to this case. The Speaker chose to appear before the High Court and argued the merits of the matter, though he could have at a preliminary stage, challenged the court’s jurisdiction to intervene at an interim stage. The Rajasthan High Court reserved its judgment, requested the Speaker to defer further proceedings and proceeded to direct him to await judgment.

A co-equal

The High Court’s direction to the Speaker, led to him moving the Supreme Court, questioning the court’s power to direct a Constitutional authority. The principle of law being urged is that Constitutional authorities cannot issue directions to each other. They can, at best, make a polite request.

In 1982, a Bench of the Supreme Court, directed a single judge of the Calcutta High Court to urgently hear a matter and proceed to judgment (*A.K.M. Hassamanuzaman & Ors. v. Union Of India & Ors*). The single judge in Calcutta, Justice Sabyasachi Mukherjee (later, Chief Justice of India) proceeded to hear and decide the matter. He however recorded in his judgment that the Supreme Court was only co-equal with the High Court, as a Constitutional Court. Appellate powers of the Supreme Court did not make it a superior authority to which the High Court was subordinate. Ever since, the Supreme Court has been careful to couch its orders as requests to any High Court, or Constitutional authority.

Constitutional courts have followed the same principle, in addressing other Constitutional authorities. The Speaker of a House of legislature or Parliament, represents that august body and is the guardian of its privileges. The House cannot be ordered around in its internal working, by any court, no matter how high or supremely infallible it perceives itself to be. Unnecessary conflict between organs of state may well invite some Speaker, backed by a solid majority at State and Centre, to defy the courts, when it comes to the internal working of the House of Parliament or legislature.

The last word

Courts are apolitical but keep getting pulled into political thickets, especially in matters of mass defections resulting in regime change. They must therefore be very chary of being turned into a third house of Parliament or legislature. The walls of separation between constitutional organs, once breached, cannot be then repaired against future intrusions. Even under a sovereign Constitution, parliamentary and legislative supremacy in their spheres of functioning should be respected.

The Supreme Court permitted the Rajasthan High Court to proceed to judgment on July 24, but directed that its orders would not be implemented, as the Supreme Court itself proposed to rule on the larger question of the jurisdiction of courts to entertain such pleas. The Rajasthan High Court has

thereafter decided to await the Supreme Court judgment and in the meanwhile injunctioned the Speaker from proceeding further.

The legal back and forth has in effect granted the insurgent faction, precious time to consolidate their plans of regime change. Mr Gehlot has now, correctly called for an immediate summoning of the Rajasthan Assembly, to prove his majority on the floor of the house. Political questions must be answered in political forums and not be confined to quibbling in courts.

The Court must be mindful of Portia's warning in *The Merchant of Venice*: "Twill be recorded for a precedent. And many an error by the same example/Will rush into the state. It cannot be."

Meanings of Difficult Words:

- ❖ **stay away from** (phrasal verb) – avoid, evade, dodge.
- ❖ **thicket** (noun) – dense growth of something (particularly small trees/bushes close together).
- ❖ **sovereign** (adjective) – independent, self-governing, self-determining; having independent authority and the right to govern itself.
- ❖ **supremacy** (noun) – authority, primacy, power, dominion.
- ❖ **rebellion** (noun) – defiance, disobedience, dissent, nonconformity, subversion.
- ❖ **crash-land** (verb) – arrive suddenly; (of an aircraft) make a landing roughly in an emergency.
- ❖ **rush** (verb) – act rapidly/hurriedly.
- ❖ **predecessor** (noun) – previous holder of the post; forerunner, precursor, antecedent.
- ❖ **tread** (verb) – step, walk, go.
- ❖ **reticence** (noun) – reserve, introversion, restraint, unresponsiveness.
- ❖ **retelling** (noun) – repetition, reiteration, restatement, saying again.
- ❖ **atheist** (noun) – unbeliever, doubter, irreligious person.
- ❖ **oath** (noun) – vow, sworn statement, promise/pledge.
- ❖ **swearing in** (noun) – an official ceremony in which a person is taking oath and admitted into a new official job.
- ❖ **serjeant at arms** (noun) – an officer appointed by a legislature, to keep order during its meetings.
- ❖ **hold** (verb) – give (a verdict/judgement).
- ❖ **House of Commons** (noun) – the lower house of the Parliament (of the United Kingdom) ("the House of Lords" is the upper house).
- ❖ **subject to** (adjective) – conditional on, contingent on, dependent on; under the control of.
- ❖ **jurisdiction** (noun) – authority, power.
- ❖ **sentence** (verb) – punish, convict.
- ❖ **imprisonment** (noun) – incarceration, custody, confinement.
- ❖ **breach** (noun) – contravention, violation, breaking, non-compliance.
- ❖ **privilege** (noun) – special advantage, right, benefit (enjoyed by legislators).
- ❖ **subsequently** (adverb) – afterwards, later on, eventually.
- ❖ **call out** (phrasal verb) – to summon into action.
- ❖ **pendency** (noun) – dependency, something pending; something remaining undecided.
- ❖ **umbrage** (noun) – take offence, be offended, take something personally, be aggrieved, be upset, be angry.
- ❖ **regard** (verb) – consider, look on, view, see.
- ❖ **marshal** (noun) – law-enforcement officer (in a assembly).
- ❖ **bar** (noun) – a particular court of law.
- ❖ **shoot down** (phrasal verb) – gun down, kill someone.
- ❖ **hands-off** (adjective) – non-interfering, non-restrictive, liberal, uninvolved, permissive.
- ❖ **relative** (adjective) – some, reasonable, considerable, a fair degree of.
- ❖ **go on to** (phrasal verb) – continue, proceed (to do something).
- ❖ **entertain** (verb) – consider, take into consideration, give attention to.
- ❖ **contempt** (noun) – disrespect, scorn, disregard, neglect.
- ❖ **competent** (adjective) – capable, skilful, talented.
- ❖ **Anti-defection law** (noun) – The 10th Schedule to the Constitution, popularly referred to as the 'Anti-Defection Law,' was inserted by the 52nd Amendment in 1985. The grounds of disqualification are specified in Paragraph 2 of the 10th Schedule. A member would incur a disqualification under paragraph 2 (1) (a) when he "voluntarily gives up his membership of a party" and under 2 (1) (b) when he/she votes (or abstains from voting) contrary to the directive issued by the party.

- ❖ **proceedings** (noun) – legal action, prosecution.
- ❖ **as far as** (phrase) – to the degree/extent that.
- ❖ **tribunal** (noun) – a special court or arbitration panel set up to resolve a particular dispute.
- ❖ **make clear** (phrase) – explain, clarify, elucidate.
- ❖ **intervene** (verb) – interfere, intrude, get involved.
- ❖ **interim** (adjective) – provisional, transitional, temporary.
- ❖ **have regard to** (phrase) – pay careful attention to.
- ❖ **quia timet** (adjective) – Latin meaning “because he fears”; relating to an action to restrain wrongful acts which are threatened or imminent but have not yet commenced.
- ❖ **pivotal** (adjective) – central, vital, significant/important, crucial/critical.
- ❖ **parliamentary democracy** (noun) – a system of government in which citizens elect representatives to a legislative parliament to make the necessary laws and decisions for the country.
- ❖ **guardian** (noun) – protector, defender, champion, custodian,
- ❖ **far reaching** (adjective) – widespread, overarching, sweeping, important, major, significant.
- ❖ **backdrop** (noun) – situation, scenario, context.
- ❖ **issuance** (noun) – an act of issuing/providing something.
- ❖ **threshold** (noun) – lower limit, starting point, the level (to react to something).
- ❖ **reluctant** (adjective) – unwilling, disinclined, unenthusiastic.
- ❖ **invariably** (adverb) – always, every time/each time; habitually/inevitably.
- ❖ **show cause notice** (noun) – a notice/order asking an individual/group of person to justify, explain, or prove something to the court/organisation.
- ❖ **ensconce** (verb) – settle, position, establish (in a comfortable place).
- ❖ **proceed** (verb) – (in law) start proceedings against, take proceedings against, begin an action against.
- ❖ **defection** (noun) – desertion, absconding, decamping.
- ❖ **cease** (verb) – bring to an end/halt/stop, conclude, terminate.
- ❖ **merit** (noun) – goodness, standard/quality, worthiness.
- ❖ **reserve** (verb) – defer, postpone, put off (a judgement or decision).
- ❖ **defer** (verb) – put off, postpone, delay; shelve, suspend.
- ❖ **co-equal** (noun) – equivalent, fellow, parallel.
- ❖ **Constitutional authority** (noun) – a body of law which defines the role, powers, and structure of different entities within a state (country), namely, the executive, the parliament or legislature, and the judiciary.
- ❖ **directions** (noun) – instructions, command, order.
- ❖ **at best** (phrase) – simply, merely, only.
- ❖ **appellate** (adjective) – (of a court) dealing with cases on appeal to review the decision of a lower court.
- ❖ **subordinate** (adjective) – secondary, subsidiary, of little importance.
- ❖ **couch** (verb) – express, convey, communicate.
- ❖ **august** (adjective) – acclaimed, impressive, highly regarded.
- ❖ **infallible** (adjective) – unflinching, faultless, error-free.
- ❖ **apolitical** (adjective) – not interested/involved in politics.
- ❖ **chary** (adjective) – careful, cautious, wary/circumspect.
- ❖ **intrusion** (noun) – encroachment, trespass, violation.
- ❖ **injunct** (verb) – order, direct, command, instruct.
- ❖ **back and forth** (phrase) – from place to place, around, about, in all directions.
- ❖ **insurgent** (adjective) – rebellious, rebel, rioting, traitorous/disloyal.
- ❖ **faction** (noun) – group, division, sector.
- ❖ **consolidate** (verb) – strengthen, make stronger, reinforce, fortify.
- ❖ **call for** (phrasal verb) – require, publicly ask/necessitate, demand.
- ❖ **summoning** (noun) – convening, assembling.
- ❖ **quibbling** (noun) – complaining, fault-finding, nitpicking, criticism, objection (about a trivial matter).
- ❖ **mindful** (adjective) – aware of, conscious of, heedful of.
- ❖ **twill** (noun) – a short form of “it will”.
- ❖ **precedent** (noun) – model, example, previous example/instance, prior instance.