



TRANSGRESSIONS BY ELECTED REPRESENTATIVES

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At a felicitation function for Dr Karan Singh about six months ago, Vice President Jagdeep Dhankar raised the issue of exercise of executive authority by legislature, which is seldom discussed or debated. He said, “exercise of executive authority by either judiciary or legislature is not in consonance with democracy, as also constitutional prescriptions”.

The import of VP’s remarks has largely gone unnoticed but nonetheless represent an unaddressed issue which has been festering since Independence, albeit covertly, but which off late has started raising its head with blatant disregard to the constitutional scheme for separation of power between the executive and the legislature. Transgression by the legislature into the domain of the executive has become so rampant that people across the country increasingly consider their elected representatives as the CEOs of their constituencies. The problem is not party centric.

Role of Media

The blurring of lines between the executive and the legislature is not a recent phenomenon. In fact, MP or MLA local area development fund was created by the Parliament and different state assemblies solely to address the unrealistic expectations the electorate started having from their MP, and particularly the MLA. Since elected representatives are under greater pressure to be seen as delivering on the unrealistic promises made during elections, MLAs and MPs are now being co-opted by governments in the administration of their constituencies by way of district level committees or consultative bodies, thereby putting local executive under greater pressure to accede to interference in discharge of their functions by the legislature.

TV news media in particular, since privatization in the 1990’s, is guilty of fueling unrealistic expectations amongst voters. If you are hooked to TV news, you would not miss, during every

election season, anchors on the ground seeking views of the public on development work undertaken by the 'elected representative'. Incumbents and their supporters point to overhead water tanks, roads, sewerage, streetlights, setting up of industries, creating employment opportunities and the like to prove that they have performed well while opponents use the lack of such measures as failure of the incumbent.

Since the 1990s, we have therefore increasingly observed a trend in all governments of giving their MLAs a tacit say over the administration of their respective constituencies. MLAs now almost act as CEOs of their constituencies. This is nothing but discharge of executive function by the legislature that VP had alluded to as not in consonance with constitutional prescription.

The misguided TRP driven programs and news reports have led to a situation where even voters consider influence peddling by their MLA (and to a lesser extent the MP) as a fait accompli. Different voting patterns observed in parliamentary elections and assembly elections is mainly attributable to a general expectation amongst the voters that the MLA they elect will control the local administration including the police, ensure development works in the constituency, create jobs and will also help them secure favors at the state level, be it access to hospital beds, or transfer of kith and kin employed in government service closer to home, to name a few. In fact, a candidate who appears to be someone who will have greater say with the executive, often finds favor with the electorate. However, such exercise of influence by elected representatives over the executive is a serious issue.

The Constitutional Scheme

It is important to discuss the limitations to the role of elected representatives such as MLAs and MPs under the constitutional scheme, and the risks associated with granting greater say in the administration to the elected representatives.

Under the constitutional scheme, MP or MLA is elected to vote to form or bring down governments, to legislate, and to raise issues that need debate or attention of the house and the government. Outside of the aforesaid functions, the Constitution does not envisage another role for the elected representative, unless the elected representative has been made a minister, that is, part of the executive.

Constitution does not envisage any role whatsoever of an elected representative in the executive, save as a minister. Even as a minister, she is the executive head of the ministry and has an obligation to ensure that the ministry works for the whole state in an impartial

manner. Yet, it is not uncommon for ministers to claim how their constituency had garnered greater benefits and developmental projects during their tenure as a minister.

Interference by an elected representative in the discharge of functions by the executive is violation of the oath administered to the elected representative under the Third Schedule of the Constitution. Similarly, if a minister has acted in a partial manner towards the constituency she represents, it is violation of the solemn oath administered to the minister to act in a fair and just manner, without fear or favor, in accordance with the Constitution.

Understanding the Malice

Though it is natural for public to applaud overt intervention of their MLAs in solving their day-to-day problems, including garbage, sewage, streetlights, roads and law and order, such assumption of executive powers by the elected representatives is at the root of many problems that common citizens, industries and businesses suffer on a day-to-day basis across the country. From experiences at the police stations if a crime has to be reported, to the quality or pace of investigation, to local administration doing or not doing something, is often, if not always, guided by the influence exerted by the elected representatives or their workers. A local administration that is subservient to an elected representative will seldom act in a just and fair manner if the elected representative has indicated otherwise, unless forced by circumstances such as public outcry or media attention. Elected representative are guided by what is beneficial for their survival, that is, votes. They have to keep their workers, and those who approach their workers, pleased.

The reason for increasing use of money and muscle power in elections is because of the extra constitutional powers being exercised by elected representatives, and the perks that come with unchecked power without accountability. A candidate for any assembly seat must enlist support of workers. Workers have expectations from the candidate they work for and hope to be rewarded in many ways after the win. Besides rise in stature in the local community or party hierarchy, workers could also expect the elected representative to put pressure upon the local administration to look the other way in case of threats to manufacturing units to source resources from or sell by-products to their firms or ignore illegal activities such as encroachment on public land, illegal sand mining and extraction of minor minerals, to name a few.

It is no secret that unskilled manpower supply, access to local resources, sale of scrap or waste in many manufacturing clusters across the country is generally controlled by firms floated by political workers and supporters of the local politicians. While it may vary in degree

from region to region, the malice is only increasing with time. To avoid trouble, large businesses and manufacturing units must source manpower and other local resources from, and sell by-products, scrap and waste to those firms which have been established by politician's workers who have protection of the local administration due to the control exercised by the elected representative over the executive. Malice of unchecked environmental damage is also partly linked to the issue, as officials hesitate to act against those in default, particularly if the defaulter is a local entrepreneur or protected by the local politician.

Rule of law is sine quo non for attracting investments, including in manufacturing. If the local administration will not act fairly or in accordance with law, or act under the influence of elected representative to do or not to do something which otherwise ought to have been done or not done, it represents a huge challenge to doing business. In the face of influenced administration or executive, ease in compliances and decriminalizing violations alone cannot be enough to attract sufficient investments in manufacturing.

Thus, manufacturers who invest have to find ways to work with elected representatives or their workers, often at the cost of better salary or incentives for the labor force. Manufacturers must ignore non-compliances by firms they are compelled to work with, increasing their own risk, for instance, as the principal employer. Manufacturing units also must suffer lack of independent business decisions at the plant level to survive or avoid trouble, warranted or unwarranted, from the administration that acts at the whims and fancies of the elected representatives. Despite the opportunity that India represents, and the governments' push for manufacturing, local level political interference in the affairs of the executive is one of the factors that dissuades investments in manufacturing.

The main reason for public outrage in the R G Kar case, or for that matter the Pune Porsche case was due to the perceived interference by elected representatives in the administration of justice. However, while taking up these specific cases, neither the judiciary, nor the media has attempted to address the all-pervading nature of the malice that is at the heart of such incidences.

It is not democracy, but the blurring of lines between the role of elected representatives and the executive that is impeding India's progress in a significant way, and unless it is addressed, the governments' desire for growth and prosperity for all can easily turn into chaos.

Belling the Cat

No political party can be expected to state that role of MLAs and MPs is limited to forming governments, debating and passing laws and being the voice of their constituencies in assemblies and the parliament, respectively. It would be a political suicide for a party or its candidate if they were to clarify that the candidate is contesting elections only to be the voice of the constituency in the house and no more. Similarly, one cannot expect political parties or their candidates to clarify that the role of a minister is limited to the exercise of powers in accordance with law in respect of the ministry or the department entrusted to her, and no more, except perhaps participating in cabinet decisions if the minister is of that rank.

The question then arises as to who can bell the cat? It should be the Election Commission of India (EC). It is for the EC to clarify to the electorate why we are electing a representative, and what his role is, and is not. Neither any amendment to law, nor additional budgetary support is required to enable the EC to take up this campaign. EC spends huge sums on TV ads, newspapers, FM and other media to motivate more people to vote. Such campaigns can add messages on role of MLAs and MPs and what the electorate should not expect from them.

Besides the above, higher judiciary will also have to step in to stem the rot. Elected representatives ought to be bound by the oath to act in accordance with the Constitution. Jurisprudence on binding nature of oath, and consequences of breach thereof, ought to evolve. Transgression by the legislature in the affairs of the executive is not in conformity with the constitutional scheme, and breach of oath should lead to disqualification.