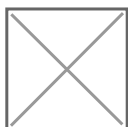


News

Neither Article 200 Nor 142 Enables Issue Of Any Command To Governor Or President Of India

Neither Article 200 Nor 142 Allows Issuance Of Any Order To Governor Or President Of India
Senior Advocate SP Shankar:



Supreme Court has made a supreme mistake.
Constitutional integrity is at its "watershed" moment.

Constitutional Reality Pertinent part of the Preamble to the Constitution of India states:

"Equality of Status and Opportunity and to promote among them all; Fraternity,
Assuring the Dignity of the Individual and being the integrity and of nation".

It is regarded to be a fundamental feature of the Constitution of India. Moreover, in Keshavananda Bharti, it is mentioned that whenever there remains uncertainty in relation to the meaning of any of the Articles, one has to refer to the Preamble of the Constitution of India.

Three branches of Democracy viz. Legislature, Executive and Judiciary are co-equals. None of them is higher or lower than the other. They are to receive equal dignity and respect. Their cohesiveness and integrity are sine qua non to the rule of the Nation.

This is also the underlying characteristic of the constitution of India; and Grund Norm. Principle of separation of powers, in terms of Article 50 is drawn from Constitutional reality, that is, equality of status and of opportunity.

It is established law that the separation of powers is the elementary characteristic of the Constitution of India. Legislature, Executive and the Judiciary are to act in the roles spelt out in the Constitution of India.

Citizens of India have bestowed upon themselves, a sophisticated collection of indispensable provisions for the Republic of India to be able to administer itself, on Democratic Principles, providing equality of status and opportunity and the like, as envisaged in the Preamble to the Constitution of India. The interpretative process and judicial decisions have both streamlined and ordained, in a most fitting way, the method of governance by the People of India.

One of the topics to be discussed in this Article is the Obligation of the State Legislature to present the Bills so enacted by the State Legislature to Assent of the Governor,

under Article 200 and the obligation of His Excellency the Governor to give/withhold assent and reserve the Bill for further consideration. In the Tamil Nadu Vs Lt Governor of State of Madras case, a piquant scenario occurred and the judgment delivered therein has caused a flutter.

What was a bright and colourful bunch of beautiful feathers now stands as a distraught group of feathers in a heap of torn and twisted, broken and bleached, disfigured feathers. Eternity cannot recapture what is lost in the exercise of powers delegated by the Constitution.

State Legislature's role in the case of enacting Laws, Bills and the like by the State Legislature has to be restricted and brought within the provinces of certain Articles. Executive head, as being His Excellency the Governor of the State, having a discretion on the Bill reserved to the assent of the Governor, does count.

Some rights and duties and some provisions of the Constitution can never be annihilated even by process of amendment under Article 368. These indestructible elements constitute the basic structure of the Constitution.

These are not only unable to be annihilated or abated but are also not capable of being watered down in any way.

It was Mr A.R. Cornelliious,

Hon'ble Chief Justice of the Supreme Court of Pakistan, who enunciated the law to state that "In the guise of interpretation, the court shall not affect or destroy the fundamental aspects of the Constitution".

According to the dicta of the above statement of law,

Justice Mudholkar in 1965, borrowed the above said statement in Sajjan Singh to conclude that

"basic features of the Constitution of India cannot be changed at any cost, even by means of process of amendment of the Constitution under Article 368".

It fell to the share of 13 Judges in Kesavananda Bharti, with due help of the great patriot and Senior Advocate Sri N.A Palkiwala, that basic structure of the Constitution is sacrosanct and would remain above any amendment to it even under Article 368 of the Constitution of India.

What are the basic features/structure of the Constitution have been neatest catalogued and formulated over the years. One of them is the Separation of the Judiciary from the Executive within the public service of the State and the Judiciary.

Article 50 requires separation of powers between the Executive and the Judiciary.

None knows that Article 50 cannot be enforced by itself but would facilitate synthesizing of Directive Principles with Fundamental Rights such as Articles 13, 14, 19, 21 and Preamble of the Constitution to fulfill Constitutional mandate and ethos.

In Ram Jawayya Thakur, (5 Judges) Hon'ble Supreme Court held that in India Separation of Powers is not observed in absolute sense. With all humility, this observation of the Constitution Bench can be construed as confession of inability /unpreparedness of the State to implement Article 50 and not a statement of law of a binding nature.

Whereas in the case of reservation extended by State of Bihar upto 65% for appointment to the post of Judges in the State Judiciary, Government order was quashed only on the basis that State has no concern in the issue of reservation in the appointment of Judges and the same is contrary to the basic feature of the Constitution.

Clarity and transparency with which Separation of powers, in relation to Article 50, is explained by the Supreme Court, upholding separation of powers to be a foundational feature of the Constitution, render it re-readable and worth re-reading. Equality of Status and opportunity guaranteed in the preamble is ABSOLUTE. It is Grundnorm. It is general and pervades everywhere. Specie is Separation of powers, which is considered a fundamental feature of the Constitution. It is trite to point out that Article 50, in Part IV, has its source in the Preamble. No wing or pillar of Democracy, is under the other. They are on an equal footing and have an equal opportunity.

In *Coelho v. State of Tamil Nadu* 7 Judges bench categorically held that separation of powers, also called Doctrine of Checks and Balances, is a sacrosanct basic structure of the Constitution.

In NJAC case separation of powers and accountability of the Judiciary is watered down to the extent that many loose ends are still pending for discussion and have gone unnoticed. Recently, on the eve of Hon'ble Chief Justice Mr Justice Chandrachud's retirement, a bench of 9 Judges has decided that a provision of law or Statute itself or any administrative action or any fiat by the State, cannot be struck down on the assumption that the same is against the basic features of the Constitution.

"Liable to be struck down" is a distinct term different from

"indestructible features /structures of the Constitution of India" and stands alone.

Governor /President; Allegiance To Constitution The oath of office to be executed by the Governor/President is specially worded and named under Articles 69 and 159 of the Constitution of India.

Oath of office by High Court Judges under Article 219 read with III Schedule, the two forms mentioned above are completely different and the Governor and the President are to follow, obey tenets in spirit and loyalty of the Constitution shall not be diluted. Oath of office of Judges is on grounds of prejudice and favour, and not so much on loyalty to the Constitution.

The Governor is the Executive head of the State. He is answerable for all acts of the Legislature and the Executive. The President is the supreme authority of the Nation. The President has tremendous responsibility, power and duty regarding the entire Nation, including the appointment of Judges.

Governor/President do not take command from anyone since they are the supreme commanders in their territory. This facet is a constitutional fact and would serve the dignity of the Individual, the Legislature and the Executive qua Unity and integrity of the Nation.

Denigrating them is denigrating oneself. Accountability Skewed The Constitution of India is the Supreme Lex is not in doubt. Similarly, separation of powers and establishment of borders/territory for exercise of powers by the three wings of the Democratic Republic of India,

i.e., Legislature, Executive and Judiciary is well established, and one wing shall not encroach upon the other or usurp the power of the other pillar of Democracy. It is prohibited.

The doctrine of Checks and Balances and accountability are constituents of Constitutionalism and constitutional philosophy.

Whenever there is uncertainty in the context of interpretation of any Article of the Constitution, one must read the Preamble and interpret the provisions of the Constitution in the way appropriate to maintain Constitutional ethos, attain constitutional integrity and prevent creation of Constitutional aberrations/turbulence. There is a definite element of checks and balances, in the sense that an elected member has a fixed tenure of office and cannot continue himself or herself in office.

He/she must contest again and get elected after showing good work done in his/her constituency. He/she is answerable to the voters.

The executive has equally rigorous disciplinary norms, and it is also bound by Conduct Rules.

There cannot be perpetuation in occupying the office by the Executive in disregard of conduct. It is only the Judiciary that has immunity from being answerable to the People of India. People of India alone are the Sovereign, the rest are answerable to the people of India.

In actuality, the Judiciary has claimed immunity on its own de hors any legislation, in this regard and has persistently eschewed on maintaining that the Judiciary is not answerable.

Accountability is hence distorted. On April 8, 2025, Hon'ble Justice J.R. Pardiwala and Hon'ble Justice R Mahadevan dismissed W.P. 1239/2023 moved by the State of T.N. against the Governor of T.N., mulling over Article 220 of the Constitution of India. Article 142 does not sanction the deduction that the sanction is considered to be granted.

This is a misreading and misapplication of Article 142. Alternatively, one has to look at whether the doctrine of Ipso Jure would fit the fact situation. The doctrine would imply that consequences must follow faithfully and lawfully from a fact situation. Here, in the given case, nothing can succeed legally or in faith to deduce a presumed sanction since Article 142 is directed towards the interpretation of Law made by Parliament and not to provisions of the Constitution of India.

Analysis Courts cannot add or subtract from Article 200 since it is amending Article 200 without the use of Article 368. What cannot be done under Article 368 is attempted to be done by the Hon'ble Apex Court in the State of T.N. Case. What cannot be done directly shall never be permitted to be done indirectly.

Article 142 is attempted to be availed in order to interpret a deeming provision to state that delay of more than three months in granting or refusing to grant consent would mean giving actual consent. Statute interpretation does not justify this.

Constitution is not a mere statute passed under Article 246. Constitution is the result of toil of the Constituent Assembly.

Article 200 is a vital component of the Constitution of India, and it has a contribution to achieve constitutional integrity.

In the name of interpretation or to do substantial justice under Article 142, the Supreme Court could not have held the Law that delay means according sanction. The Supreme Court has done a supreme mistake.

In a lighter tone, hesitation on the part of President of India to appoint individuals suggested by "Collegium" (a judicially created tool by Supreme Court to acquire power of appointment of Judges), does not permit any assumption or presumed appointment of judges and when judgment is reserved and there is a lapse of time, there cannot be any presumption or assumption that by default parties could assert that there is a presumed judgment in its/their favor.

Constitution of India and or provisions thereof cannot be trivialized or diluted. Unnecessary abrasions and turbulence are caused by this judgment without the aid and assistance of any provision of the Constitution of India, and the order needs to be rethought and directions issued thereon to be unraveled. Constitutional integrity is standing at its "watershed" moment.

No cost is monumental, no endeavor is heavy to surmount the situation. Constitution is Supreme. Unauthorised and unjustified figment of imagination of deeming essential/basic or fundamental features cannot change. The case is to be revisited.