



Maintain separation of power

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(Mains GS 2 : Separation of Powers between various organs Dispute Redressal Mechanisms and Institutions.)

Context:

A recent speech by Justice S. Abdul Nazeer of the Supreme Court of India on the continued neglect of the teachings of the great legal giants of ancient India such as Manu, Kautilya, Yajnavalkya, etc. has evoked vibrant discourse in legal and political circles.

Tough path:

- According to Justice S. Abdul Nazeer, the kingdoms of ancient India had a fine justice dispensation system and thus apathy towards the ancient legal system has been against “our national interest”.
- Many ideas of modern methods of adjudication were prevalent in indigenous jurisprudence which reflected in Kautilya's theory about the duties of the king which is based on the great tradition established in the age of Ramayana.
- However, when religious revivalism is used as a political tool by the ruling dispensation, the legal revivalism expounded by the judge in generic terms can only subserve the regime's political and populist agenda.

Nation's legal landscape:

- The Constituent Assembly debates started on December 9, 1946 and were completed on November 26, 1949 on which day the Assembly approved the draft.

- Though the Government of India Act, 1935 was a major source for the constitutional script, the debates in the Assembly and their outcome made it a unique socio-political document.
- The Constituent Assembly debates on designing the nation's legal landscape and many prominent members plead for Indianness.

The CA debates:

- In constituent assembly members showed different opinions, for example: K. Hanumanthaiah said "We wanted the music of Veena or Sitar, but here we have the music of an English band".
- Pandit Govind Malaviya's suggestion was to start the Preamble to the Constitution with the words, "by the grace of Parameshwar, The Supreme Being, Lord of the Universe".
- Mahavir Tyagi emphasized regaining "spiritual freedom" and not just political freedom and Lokanath Misra was anxious about "the complete annihilation of Hindu culture".
- On the other hand, H.V. Kamath warned that the history of Europe during the middle age was "bloody" and it showed "the pernicious effects that flowed from the union of Church and State".
- H.V. Kamath further said that "if a State identifies itself with any particular religion, there will be rifts within the State".
- Thus, the plea for "Indianisation" was confronted not only with the values of western liberal democracy but also with the finer parts of the Indian tradition, which were organically incorporated into the Constitution.

Effective tool:

- The country's democracy has faced new lows in recent times as reflected from the freedom index, hunger index and the recent *New York Times* report which stated that "in India, laws against religious conversions have been accompanied by mob violence".
- The draconian penal provisions like the sedition law are all colonial remnants which also need to be considered while attacking the colonialisised legal system.
- The Constitution became the most effective tool against electoral autocracy to protect the Constitution and the idea of the Rule of Law along with the spirit of secularism and federalism.

Conclusion:

- The institution of judiciary and the persons running it is a fundamental factor that determines the quality of judiciary and polity.
- Thus comments of judges need to be good for our democracy and in tune with the constitutional scheme of the separation of powers.