



# The Mid Towner

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## Bulletin of the Rotary Club of Chandigarh Midtown

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## Programme



Please do attend

FRIDAY - FEBRUARY 02, 2007

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### TRENDS IN URBANIZATION

Guest Speaker : Mr. M. Ramshekar, IAS  
Transport Commissioner, Haryana

Venue : Hotel President, Sector 26, Chandigarh

Meeting will be followed by Cocktails  
Courtesy: PP.T.S. Anand

Time : 6.30 P.M.

## WHO IS SUPREME ?

### The Parliament, the Judiciary or the Constitution

PP Dr. Balram Gupta initiated the discussion on the supremacy of the Constitution of India by pointing out: "Be you ever so high, the law is above you." Law is the king of kings.

It was in the year 1947 that a conscious decision was taken that India should be governed by a written Constitution. The Constituent Assembly took 2 years, 11 months and 17 days to frame the Constitution which ultimately came into existence on January 26, 1950. We have already experimented with the Indian Constitution for the last 57 years. On the occasion of the 58th birthday of the Indian Constitution, Dr. Gupta focused that each Organ of the State i.e. the Parliament, the Executive and the Judiciary has to function under the Constitution and to follow discipline of the Constitution. Dr. Gupta also pointed out that the Parliament has the power to amend the Constitution but not the basic structure of the Constitution. It is like the Rotary Constitution. The Four-way Test of Rotary and the two symbols of Service and Fellowship constitute the basic structure of the Rotary Constitution. The same cannot be tinkered / changed.

The Constitution does recognize certain privileges of Parliament and its members. Recently, the Supreme Court upheld the privilege / right of the Parliament to disqualify its members if they were found guilty of accepting cash for asking questions in the Parliament. At the same time, the Supreme Court also pointed out that the Court has the legitimate right to exercise judicial review in as much as that while disqualifying any member, whether any fundamental right of the member was violated or not; in other words, the procedure followed was reasonable, just and fair or not.

Dr. Gupta also referred to another recent decision of the Supreme Court relating to the 9th Schedule in the Indian Constitution. The 9th Schedule contains different enactments enacted by the Parliament or by the State Legislature relating to different aspects. Whenever Parliament or the State Legislature feels that the Legislation is likely to be challenged as violative of some provision of the Indian Constitution, the Constitution itself is amended in order to include such a legislation in the 9th Schedule. Whenever any legislation is included in the 9th Schedule, the same is protected and



PP Dr. Balram Gupta - Constitution Expert





Rtn RTPS Tulsi - 'Common Man's Advocate'

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cannot be challenged as violative of the Constitution. So far, 284 different Acts have been included in the 9th Schedule by amending the Constitution from time to time. This means, the Parliament or the State Legislature is doing indirectly what it is prohibited from doing directly. The 9th Schedule has been abused than used. In fact, it has been described as the Constitutional Dustbin. The Supreme Court has held that the Court has the jurisdiction to exercise the judicial review over the Acts included in the 9th Schedule and if it is found to be in violation of the basic structure of the Constitution, the same shall be struck down. This, once again, reinforces the supremacy of the Constitution.

Dr. Gupta particularly made reference to what was said by the Chief Justice of India on January 13, 2007 on the eve of his retirement that the relationship between the Parliament and the Judiciary should not be cozy. This only means that the Parliament should not take as if the Court would endorse whatever it does. The Court being the final interpreter of the Constitution would test the actions and the Acts of the Parliament on the touch-stone of the Constitution.

In response to questions by PP Rtn. Harish Sethi & Ann Indu Luthra, Dr. Gupta focused that no Organ should be given absolute power. If absolute power is given, the same is likely to be abused. Therefore, some check must be imposed. The effort should be to balance the power. Even the Judiciary has to function under the Constitution and within the discipline of the Constitution. The Constitutional democracy is the only recipe for good governance of the country.

The other Panelist, Rtn. RTPS Tulsi examined the question essentially from the stand point of a common man. However, some back ground relating to the poser is required. He said this question has gained currency in favour of the judiciary in the light of various decisions taken in the form of Public Interest Litigation (PIL) by stepping into the shoes of the non-performing Executive and vote-bank-oriented Parliament. These cases are being reported by investigating journalists through the media and have largely influenced the minds of the masses. The impact of these PILs is bitter for some and sweet for the others.

Rtn. Tulsi also made special mention of two recent judgments of Hon'ble Supreme Court approving/disapproving the actions of Parliament. The "Cash for Query case"-Raja Ram Pal Vs. Hon'ble Speaker, Lok Sabha in which The Hon'ble Supreme Court declared their right of judicial review but upheld the action of removal of the MPs by the Parliament. This was closely followed by another judgment: I.R.Coelho(Dead) By LR's Vs. State of Tamil Nadu wherein the power of the Parliament under Art.31-B to immunize legislations from Fundamental Rights by inserting them into the IXth Schedule was declared *ultra vires* as the same amounts to tinkering with the basic structure of the Constitution.

The Constitution of India is supreme, needs no reiteration. The simmering question in the mind of the common man is, Who is Supreme - the Parliament or the Judiciary as per the Constitution of India? The Doctrine of Separation of Power enunciated by a French Scholar - Montesquieu, provides that the power of the State should be vested in three Organs, namely Parliament, Executive and Judiciary. Each Organ



'Young boy', Suraj Handa gets his birthday gift from Rtn Ravi Tulsi



R'ann Pushpa & Rtn VK Jawa get their wedding anniv. gift from PP Dr Balram Gupta

should be independent of each other. No one Organ should perform functions that belong to the other. Indian Constitution does not strictly follow this principle. The Executive is part of the Legislature and responsible to it. The President / Governor also has power to pass ordinances while the Parliament / Legislature is not in session.



Rtn Ravi Tulsi wins the punctuality draw

The framers of the Constitution envisaged high moral, ethical, political and judicial values from members of the three Organs of the State. Nevertheless, it is the Parliament who has the power to confer additional / ancillary powers to the Supreme Court (Art's 139 and 140). The Courts are not entitled to inquire into proceedings of Parliament / Legislature (Art's 122 and 212). The Parliament has powers to amend the constitution (Art. 368) including Chapter IV of Part V relating to the Union Judiciary. The passing of Money and other financial bills is the prerogative of the Parliament (Art's 107 to 110). Parliament is also empowered to abrogate and restrict the Fundamental Rights in their application to Armed Forces and persons employed in any Bureau or organization referred therein (Art. 33). These provisions of the Constitution have been referred merely to illustrate that the powers of the Parliament are wider than that of the Judiciary.

Rtn. Tulsi emphasized that the pertinent question today for a common man is not whether Parliament or the Judiciary is Supreme but who can deliver - bring in the ship containing their rights granted by the Constitution. In the present day situation, even the intellectuals are ready to overlook the specific roles assigned to the three Organs of the State. What matters to them is, at least, some Organ of the State is ready to act.

This has led to judicial activism. Initially, the PILs were intended essentially to safeguard and protect human rights of poor litigants. It has now gone much beyond its intended objectives. The Hon'ble Supreme Court keeps reminding about the need to restrict entertaining them. Parliament is also responsible in this regard when it started relying on the Courts to bail them out from tricky political situations. The number and nature of PIL's pending in various High Courts have added to the staggering pendency of cases. The attendance of members of the Executive in the Hon'ble High Courts is ever increasing, They have more bosses than before.

Rtn. Tulsi pointed out to the question - Is it reasonable to commend the Judiciary who is performing the job of the others and especially at the cost of its own primary function - disposal of staggering amount of court cases? An Organ is as good as its performance for the allotted, not assumed task. The diversion of funds of Centre and State Governments against the approved budgetary allotments of money / financial bills also affects the planning of economy of the State.

The chosen ones of the Higher Judiciary are also part of the Society. If action of members of other Organs of the State is subject to scrutiny, they cannot claim immunity. It is a cardinal principle of law that nobody can be a judge for his own cause. The Judiciary wants to judge others but are shy of being judged by others.. There is an equal need for ensuring checks and balances on the members of the Higher Judiciary which can ensure their accountability, especially under the prevailing



Mementos to Dr Balram Gupta & Ravi Tulsi

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diminishing moral and ethical values of the society. The provisions of impeachment [Art's 124(4) and 217(1)(b)] have proved to be insufficient in the present scenario. The proposal to establish the National Judicial Council(NJC) to probe charges of misbehaviour or incapacity of the Judges of Supreme Court and High Court and to regulate the procedure and machinery for investigation is *sine quo non*.

The recent statement of Justice K.G. Balakrishnan, the newly appointed Chief Justice of India is relevant:-

"It is not the job of the judges to become social activists though I salute judicial activism. Judiciary's primary duty is to protect the Rule of Law and uphold the Constitution."

Rtn Tulsi concluded that it may be said that it is dangerous that common man should lose faith in any of the three Organs of the State. Judicial Activisms cannot and should not be resorted to at the cost of the primary function - disposal of Court Cases. Courts cannot and should not become substitutes for the powers vested in the Executive and the Parliament.

Secy. R.K. Luther presented vote of thanks, with an acknowledgement that the Constitution is Supreme. President Dr. V.J.S. Vohra appreciated the efforts of the panelists, PP Dr. Balram Gupta, Sr. Advocate & Rtn. RTPSTulsi, Advocate for presenting an interesting discussion on this currently widely debated issue before the media & the citizens of our nation, the largest democracy in the world.

*Suggestions are invited from senior, new & young Rotarians to hold more such discussions & presentations on current issues by our Rotarians, family & friends of Rotarians.*

## Team of Rotarians from Abroad for Polio Campaign

Rotary International has deputed a group of 31 Rotarians from USA & Canada to India for the NID project. They shall be in Chandigarh on Feb.13, 2007. Our club has to provide accommodation to 3 of them, from Feb.13 evening to Feb. 14 morning.

Rotarians of our club who would like to host the visiting Rotarians, may inform the President immediately or contact PP Rtn. Madhukar Malhotra on his mobile 93161-10939.

## District Conference 2007



Block the dates - 24th & 25th Feb. 2007 for the District Conference at Hardwar. Those who have not yet registered, should do so immediately with the Office Secy. V.P. Sharma. Hotels at Hardwar are available at concessional rates. The list of hotels is available with President Dr.V.J.S.Vohra.

## ✚ Get Well Soon ✚

PP Rtn. Anil Mehan has since been discharged from the hospital and is on his way to recovery at his residence. We wish him sound health and a very speedy recovery.

Mother of Rtn.Vinay Aggarwal has been admitted to PGI and operated upon for a hemorrhage. We wish her a speedy recovery.

### Donation for Sarangpur Night School Project

 Hony. Rtn. Suraj Handa - Rs. 500/- 



#### BIRTHDAY GREETINGS:

Rtn. Mrs. Davinder K. Singh  
PP Rtn. T.S. Anand

Feb. 06  
Feb. 07



#### WEDDING ANNIVERSARY GREETINGS:

R'ann Gurpreet & Rtn. Munish Jauhar Feb. 02  
R'ann Asha & Rtn. Rajiv Aggarwal Feb. 02  
R'ann Roop & Rtn. D.S. Thapar Feb. 02  
R'ann Simi & Rtn. Vikram Hans Feb. 05  
R'ann Neerja & Rtn. Anil Nagpal Feb. 08



#### PUNCTUALITY DRAW :

Won by Rtn. R.T.P.S. Tulsi

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