

The Age Of Contention

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It is a fact that human beings are born, go to school, find employment, ultimately retire and then die. Two dates in this process are crucial, the date of birth and the date of death. The date of birth determines one's age at various stages in life. It qualifies one for admission to school and college and creates eligibility for employment in jobs where there is an age limit. It also determines the date on which one will retire from service, where an upper age limit is prescribed. Equally important is the date of death because it is the death certificate which is proof of a person having died and which has to be produced as evidence in any matter relating to pension for the survivors in the family, mutation of one's name in the property register and for the purpose of any litigation which is post mortem. Under Indian law, the Registration of Births and Deaths Act, every birth and every death has to be reported and registered by the competent authority. This authority may be the Panchayat, the Municipality or any other person or office notified for this purpose under the Act. This Act applies to every Indian, including the Army, right from a sepoy upto the Chief of Army Staff. Such a legal provision existed even before the enactment of the Registration of Births and Deaths Act, though it is only the present Act which has made registration mandatory.

The present Chief of Army Staff, Gen. V.K. Singh has made a plea that his true date of birth is not 10th May, 1950 as at present recorded but is 10th May 1951. As evidence of this he has produced his School Leaving Certificate, in which the date of birth is mentioned as 10th May 1951. Government, on the other hand, has depended on other documents, including the record with the Adjutant General and the forms filled up by Gen. Singh in his own handwriting when applying for admission to the National Defence Academy (NDA) and the Indian Military Academy (IMA) on completion of the NDA course. Government is also relying on Gen. Singh's acceptance in writing of his date of birth as 10th May 1950 when he was promoted, first as GOC of a Corps and subsequently when he was promoted as GOC-in-C of a command. Gen. Singh has stated that when he filled up the NDA form he was misguided and entered the wrong year. One presumes he was equally misguided when he filled up the IMA form. Regarding his twice accepting 10th May 1950 as his date of birth when he was promoted, Gen. Singh is alleged to have stated that he was pressurised to accept this date. If at his rank Gen. Singh succumbed to pressure, then it raises grave doubts about his ability to command the magnificent Indian Army. The Government's decision rejecting Gen. Singh's representation about his date of birth has led to Gen. Singh approaching the Supreme Court. Because the matter is now subjudice I shall refrain from making any comments on the merit of the case, because it is the Supreme Court alone which now has jurisdiction to pronounce judgement.

However, one thing which strikes me as being worthy of comment is the fact that the Supreme Court has not summarily dismissed the petition in limine on the grounds that this is not a fit case for exercise of writ jurisdiction. Under Article 139 of the Constitution the Supreme Court has the power to issue writs for any purpose and this jurisdiction of the Supreme Court cannot be questioned. It is entirely upto the Supreme Court to decide whether or not to exercise this jurisdiction in a particular case. However, the general principle of jurisprudence is that the lowest court in the judicial hierarchy which is competent to hear a case must be first approached by a litigant and only thereafter should the case move through various stages of appeal. The Indian habit of taking shortcuts and going directly to the High Courts and the Supreme Court needs to be firmly curbed by these courts because these writs take up precious court time. Writ jurisdiction should not normally be exercised in dealing with issues of fact which have to be proved by evidence. The case of the date of birth of Gen. VK Singh is an issue of fact

and if there are two contending dates then the party claiming that a particular date is the true date of birth has to prove it by leading evidence before a competent civil court having jurisdiction. With utmost respect to the Supreme Court and the High Courts I would submit that in dealing with issues of fact these august courts should not convert themselves into trial courts, record and weigh up evidence and then take decisions. That is the job of a civil court. In other words, normally Gen. V.K. Singh would be expected to file a declaratory suit in which a prayer is presented to the civil court concerned to hear the plaintiff, record his evidence and that presented by the defendant government and, on the basis of evidence, issue a permanent injunction directing the State that a particular date should be accepted as the true date of birth. Obviously this is time consuming and Gen. V.K. Singh is in a hurry to obtain a decision so that if it is favourable he could continue in service upto 9th May 2013, or if the decision is not in his favour, then to retire on 9th May 2012. It is not the job of the Supreme Court to take care of Gen. Singh's service problems. However, it remains to be seen whether the Hon'ble Supreme Court takes the view submitted above or whether it decides to hear the writ petition.

If the matter had been only one of a dispute between government and Gen. Singh as a person no comment was called for by anyone. Gen. Singh is a citizen and has every right to seek redressal of a grievance relating to his service. Unfortunately the issue has been deliberately escalated and blown out of proportion, thus converting it into an Army – Civil Government confrontation. The General himself has said that it is a matter of his honour, though what question of honour is involved in whether he will retire in 2012 or 2013 is beyond my comprehension. Perhaps he is trying to show that he is the direct descendent of Satyavadi Harish Chandra and that if he claims a particular date of birth then the whole world must accept this as the absolute truth and if any question is raised about it this would be tantamount to calling the General a liar. Suppose the General loses the case? Will it be legitimate then to call him a liar?

There are many retired senior officers of the army who have jumped into the fray and are trying to make out that an unthinking government, a group of petty civil servants, are trying to impeach the honour of both the Indian Army and its Chief by holding that the date of birth recorded by and accepted by Gen. V.K. Singh on several occasions will be taken as the true date of birth. According to these retired Generals no one but the Army Chief himself has the right to decide on any service matter which pertains to himself. Unfortunately in the process army officers contemptuously refer to senior Civil Service officers as babus. I find this attitude personally reprehensive. The civil servants who are dealing with various issues of government are honourable members of India's premier service, the Indian Administrative Service, whether or not the army likes it. Would army officers like to be called painted popinjays? I would probably physically assault any person who made such a derogatory remark in my presence because I consider army officers to be gentlemen, soldiers and true servants of India. Should civil officers not be given the same respect by army officers?

Regarding the civil-military relationship in India, I would suggest a brief course of education in the Constitution of India for army officers at the time of selection, in mid career and at the time when they achieve senior ranks of command. The Constitution speaks of the people, the executive, the legislature and the judiciary. The armed forces are a part of government and not a substitute for or rival of government. The executive power of government is exercised by the President, who is also the Supreme Commander of the Defence Forces of the Union of India. The exercise of the power as Supreme Commander is to be done according to law and law is framed by Parliament and not by the Defence Forces. It is the law which creates the Defence Forces and to the extent that the law provides for autonomy the Defence Forces would be autonomous. I have before me the Army Act, 1950. Section 1 (2) states that the Act would come into force when notified by the Central Government. Under section

10 of the Act every officer, junior commissioned officer or warrant officer of the regular army is commissioned and appointed by the President. Under section 18 every person appointed under the Army Act holds office during the pleasure of the President. Under section 19 the Central Government may dismiss or remove from service any person subject to this Act. This applies to the Chief of Army Staff also. The President, under Article 74 of the Constitution, is required to act on the aid and advice of the Council of Ministers. In rendering such advice the Council of Ministers and individual ministers are required to act as per the Rules of Business framed under Article 77 of the Constitution. It is these provisions of law which place government, that is, the civilian authority in a position of superintendence, direction and control over the armed forces. The case of the Army Chief pertaining to his date of birth will go to the Defence Ministry, the Defence Secretary will, under the Rules of Business, record his opinion, this will be submitted to the Minister of Defence, who will either take a decision himself or place it before the Prime Minister to advise the President on the course of action to be followed. Under the Constitution there is no question of conflict between the military and the civil and in matters which by law are determined by government the armed forces will abide by these decisions without question, without going public and without raising a controversy about civil-military relationship. The present attempt by some people to make this whole issue of Gen. V.K. Singh's date of birth a matter of contention is reprehensible. The matter is between an individual called V.K. Singh, who is a government servant though in its military branch and the Government of India. It is not between the Army and the Civil authority.

Gen. V.K. Singh has chosen to behave in a particular way and that is his prerogative. However, it is the government's right to take a decision in the matter, which it has exercised. This very Constitution permits Gen. V.K. Singh to approach a court of law for redressal of a grievance he has against the decision of government. He has exercised this right. He is free to prove his case in court, just as government has the right to defend its decision. Now it is for the court to pronounce judgement. It is not for the print and electronic media to daily air this case for the titillation of its readers and viewers. Let the matter rest there.
