

# The executive-judiciary tussle

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**By CKG NAIR and MS SAHOO**

In the last few years, media has been replete with articles and discourses critiquing the performance of the judiciary.

The more strident sound-bites come from those who support the view that the judiciary is on an ivory tower and the judges are having whale of a time with inexplicable vacations and few hours of court work. Some even go to the extent of berating the style of the functioning of the judges, including telling them how to/how not to write judicial orders.

Though the judiciary itself does not respond directly on these charges, it indirectly (during occasional judicial/related conference speeches) concedes that efficiency parameters have declined on account of mounting litigations, lingering vacancies and infrastructure constraints.

## A noisy debate

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These discussions and debates, though not new, gained momentum since the appointment process of the judges in higher judiciary by a National Judicial Appointment Commission (NJAC) was declared void by the Supreme Court.

A dispassionate look at these issues confirm their existence for long. However, of late discussions have moved beyond these basic issues, deviating from the values and maturity attached to institutional debate, and bordering on ignorance and lacking in professional and intellectual courtesy.

Many of them miss the principle of separation of functions enshrined in the Constitution, a basic tenet of the Constitution for maintaining harmonious inter-institutional balance, as well as the differences in their respective eco-systems.

To observers who have relevant experience to reasonably understand both the executive and the judicial branches of the State and how they work, the growing tempo of this debate is the result of an impatience with the speed of change and progress. And at times, some blame-game and grandstanding is thrown in to either hide their limitations or to proclaim their superiority.

Economically, independent India grew at a suboptimal, average rate of about 4 per cent for four decades and around 6 per cent in the next three decades. Understanding the need for rapid growth, that too taking complex geopolitical constraints into account, the executive rightly desires quick decisions and implementation.

Several laws such as contract laws, environmental laws and even corporate laws are not fully in tune with the new aspirations. Interpretations of economic laws by the judiciary remain in a static mode. Even when they come late, they are at times not in tune with the direction the executive would like it to be. So, there is disenchantment with the judiciary. While some may be genuine, many of them are the result of the mismatch between expectations and realisation.

## Balancing the three wings

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Inter-institutional balancing, even with strong constitutional provisions, is a difficult task. While the three wings of the State (Legislature, Executive and Judiciary) have to work for maintaining that delicate balance, it is primarily the responsibility of the executive to strive extra hard for the same.

Because the executive is the most visible organ of the State as it is the government for all practical purposes. It is responsible for drafting legislative proposals with clarity and in accordance with the evolving requirements and bring them before the Legislature. It is responsible for effectively implementing the law and constituting and managing all the organs (including Courts) and agencies efficiently. Parliament is responsible for only enacting the law and judiciary for interpreting it.

There is also a lot of disenchantment with the executive on multiple aspects of day-to-day civic life. Further, it is well-known that the executive is the largest litigant, clogging the judicial system. These are the result of suboptimal governance from the side of the executive.

In addition, many times, agencies are created by the executive branch either following statutes or as pure executive agencies for discharging various functions. Many of them take several years in setting themselves up in terms of human resources, tools, equipment and infrastructure. Human resource management and ensuring sufficient financial resources and operational freedom for all agencies are all functions of the executive branch, the government.

Any deficiency in providing any of them in tune with the requirement and in time is the failure of the executive. Similarly, every civilised society needs proper implementation of the laws, only a part of this role is played by the judiciary. The investigative and enforcement agencies, which are also executive agencies, need to be efficient and follow the legal process in discharging their functions.

Whatever they take to the judiciary has to be completely in tune with the laws and procedure for the judiciary to pass appropriate judgments in reasonable speed. Therefore, in a suboptimal governance and implementation model, blaming another organ of the State is not the solution.

This is not to argue that everything is perfect with the judiciary and its functioning. At times it may not be functioning in tune even with the second best facilities available. It may not be making a serious effort in improving its productivity.

Some of the orders may not be in tune with conscience of the people in general. But the inter-linkages between the three wings, though with separation of powers, can gradually envelope the entire system.

After all, judges, police, civil servants, parliamentarians, all come from the same society with the same legacy issues. Expecting one part of it to rise above the rest and perform with ability, integrity and dedication may be wishful thinking.

In order to break this sub-optimal governance trap and to enhance the performance of all wings and agencies, those in responsible positions need to take a deep breath, think aloud and come out with appropriate solutions; understanding and respecting the boundaries of each of the three wings of the State. Institutional solutions on weighty issues like inter-institutional balancing and efficiency enhancement require a balanced, institutionalised approach.

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