

Balancing Constitutional Pillars

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Our Constitution provides for separation of the three organs of governance as each of them have been entrusted with separate responsibilities and are masters in their own spheres. The role for which they have been purposefully created is limited till the point when it actually interferes or overlaps with other's jurisdiction.

The three pillars of the Constitution are:-

1. The Legislature
2. The Executive
3. The Judiciary

Now the question arises:

- A. What is the limit of functionality of each?
- B. Who will establish the extent of what has been exceeded and by how much?
- C. Who will take the corrective action?

It may be understood that the architects of the Constitution and subsequent judicial pronouncements have made the separation of the three organs viz. Legislature, Executive & Judiciary not on the basis of their non-functionality; instead they have carved out this distinction assuming that each and every organ shall play its distinctive role in full, limited to their sphere of jurisdiction.

The separation of powers is a balancing act and tries to establish equilibrium by reinforcement. The social structure is dynamic and so are the people involved in it. The changing needs, dimensions & character of the social components are demanding more of responsibility and accountability from each organ of the constitution.

The legislature has been entrusted to make laws. The executive will implement the laws. The judiciary will interpret the laws. This means that any action which is not in consonance with the constitution of India, is liable to be declared unfit, through judicial pronouncements. Further, this also means that the unlawful act of either Legislature or Executive is open for

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judicial scrutiny. The legislature is again not entrusted with making laws of any kind and form which suits to the political sentiments only. The judiciary tends to rectify any such amalgamation which is not as per the desired laws and object.

Is the role of judiciary limited to the interpretation of laws? Who will rectify the errors created by the executive or the legislature? Who would see that peoples' rights are not affected due to non performance of the executive or the legislature?

Past precedence has carved out the extension of work of the judiciary, which is mainly concerned with the constitutional security and also the people's right.

Although, there is an effective mechanism present in the executive for redressal of complaints of the individuals at different levels of the hierarchy, still the unsatisfied complainant goes to the judiciary for redressal of his complaint, which then provides a sort of satisfaction to him. Similarly, when there is need to address the peoples' problem at large, the legislator gets directions from the judiciary to enact a law concerning to the redressal of the problems.

The main reason for such an extended form of judicial work is non-performance either by the Executive or the Legislature. Similarly, the lack of accountability is also the important reason for Judiciary coming for such pronouncements.

To exemplify, it is pertinent to mention a few judicial pronouncements:-

A. The case of *Vishaka vs State of Rajasthan AIR 1997 SC 3011* was an appreciable step to provide a formal protection against sexual harassment at work place, was the outcome of a judicial action deserting the vacuum created by the legislature. Guidelines were provided by the court to prevent the sexual harassment at work place, till the legislation in this regards is enacted. Consequent upon this, the Prevention of Sexual Harassment at Work Places Act, 2013 was enacted.

B. Creation of Disaster Mitigation Fund by the center, is again an action taken by the Apex Court to materialise the functioning of the legislature for prompt action for the sufferers of the drought, wherein a short deadline was provided to establish the same.

It would seem that the judicial actions are being criticised at various levels, wherein the judicial actions have been blamed as the actions taken by the judiciary exceeding its limit of jurisdiction. But once we talk about the accountability and non-performance of the executive or the legislature, the judiciary has to come into play so as to protect and sustain the rights of the individuals, after all the balancing has to be maintained and accountability has to be established.

The recent uproar created in the Karnataka Assembly, against the decision of the Hon'ble Supreme Court, is again an example where the Legislature has crossed its boundary and have acted in excess. A brief is given below:-

Hon'ble Supreme Court ordered the State of Karnataka to release 6,000 cusecs of Cauvery river water every day to Tamil Nadu for three days.

A resolution was passed by houses of Karnataka against the courts' order.

Former Supreme Court judges have termed the resolution passed by the two Houses of Karnataka to deny Tamil Nadu Cauvery water merely an ill-advised misadventure.

Former Supreme Court judge, Justice K.T. Thomas said the *“resolution is only to fit to be kept in the records of the Karnataka Legislature and has no authority.”*

“At best, the Karnataka Legislature resolution can be treated as an expression of opinion or a criticism of the Supreme Court order. Everyone has the right to criticise a court order. But the Supreme Court is the final authority in resolving inter-State water disputes,” Justice Thomas said.

“The Supreme Court's mandate to be the final arbiter of inter-State water disputes is derived from the Indian Constitution itself, and not even the Parliament. The Constitutional makers gave the Supreme Court this power to prevent a situation by which one State will pass a resolution against the other and a constitutional crisis will ensue,” former Supreme Court judge Justice K.S. Radhakrishnan explained.

In observing the sanctity of the Constitutional principle of Separation of Powers, the Mullaperiyar judgment declared *“a law enacted by the legislature may apparently seem to be within its competence, but yet in*

substance if it is shown as an attempt to interfere with the judicial process, such law may be invalidated being in breach of doctrine of separation of powers”.

'The legislature, cannot by a bare declaration, directly overrule, reverse or override a judicial decision, exceeding its own limit'

The existence of the rights depends upon the remedy of its enforcement. The judiciary is the custodian of the citizens' right.

It seems from the above discussion that judiciary has been assuming the greater role of judicial activism, which is the result of ignorance of individuals' rights along with non-performance of the executive or the legislature.

If all the organs function in an effective and responsible way, there is no reason to produce or fortify such judicial pronouncements. After all, the constitution is supreme, and the custodian of the constitution shall ensure that peoples' right don't get ruined.
