

HARMONY AMONG THREE WINGS OF THE GOVERNMENT – IN THE PUBLIC INTEREST

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“WE, THE PEOPLE OF INDIA, have solemnly resolved to secure to all its citizens: JUSTICE, LIBERTY, EQUALITY AND FRATERNITY”

Hon’ble the Supreme Court has observed in the case of *Kesavananda Bharati vs. State of Kerala, AIR 1973 SC 1461*, that the concept of socio-economic justice is embedded in the preamble of the Indian Constitution, where it is solemnly resolved to secure social, economic and political justice to all the citizens.

In *re Berubari vs. Union of India, AIR 1960 SC 845*, the Hon’ble Supreme Court observed that the preamble to the Constitution is a “key to open the minds of the makers, and to show the general purpose for which they made the several provisions in the Constitution. Justice, Equality, Liberty and Fraternity are not merely the words of passion but are embodied in the Directive Principles of the State Policy and permeate in the Fundamental Rights.

As the socio-economic justice is enshrined in the Indian Constitution, the most challenging task being faced by the judiciary in society is social activism. In developing countries like ours, where poverty, exploitation, gender discrimination and violence based on gender have been constantly posing queries to the judiciary, it cannot ignore the situation, pleading legal formalities as the cause or dearth of judicial machinery to decide such issues and still make a claim that Courts of law are meant for all citizens¹.

Our founding fathers provided Fundamental Rights in our Constitution to protect the citizens’ liberties not only against the Executive

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¹ Ram Ahuja, Rights of Women: A Feminist Perspective, Rawat Publications, Jaipur, 1992).

but even against the Legislature. The Courts are guardians of the rights and liberties of the citizens and they will be failing in their responsibility if they abdicate this solemn duty towards the citizens.

But, there is another face of the coin. Under our Constitution, the Legislature, Executive and the Judiciary all have their own broad spheres of operation. Ordinarily it is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction, as is being witnessed in recent time. Some, who are in favour of this, marked it as positive judicial activism, while other called as judicial over-reach.

Our Hon'ble Prime Minister Dr. Manmohan Singh has expressed that the Judiciary, the Executive and the Legislature have an obligation both to our Constitution and to our people, to work in harmony. Each one of these organs of the State has an important role to play in improving the welfare and well-being of our people. Each one of the organs has their constitutionally assigned roles and responsibilities, and these must be discharged in all honesty. Each organ must respect the roles and functions of the other.

He further expressed that the dividing line between judicial activism and judicial over-reach is a thin one. As an example, compelling action by authorities of the State through the power of mandamus is an inherent power vested in the judiciary. However, substituting mandamus with a takeover of the functions of another organ may, at times, become a case of over-reach. All organs must ensure that the dividing lines between them are not breached. This makes for a harmonious functioning.

In recent times the Indian Judiciary has been often criticized for over-reach and encroachment into the domain of other two organs of the State i.e. Legislature and Executive.

Although the Doctrine of Separation of Powers does not specifically find a place in the Indian Jurisprudence; yet the founding fathers of our Constitution have meticulously defined the functions of various organs of the State. Legislature, Executive and the Judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another.

In the case of *Ram Jawaya vs. State of Punjab, AIR 1955 SC 549*, a Constitution Bench of Hon'ble Supreme Court observed that the Indian Constitution has not indeed recognized the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another.

Hon'ble Justice Dr. A.S. Anand, the former Chief Justice of India has once observed that "Courts have to function within the established parameters and constitutional bounds. Decisions should have a jurisprudential base with clearly discernible principles. Courts have to be careful to see that they do not overstep their limits because to them is assigned the sacred duty of guarding the Constitution. With a view to see that 'judicial activism' does not become 'judicial adventurism'; the Courts must act with caution and proper restraint.

Cautioning Courts from interfering in matters related to economic policies of the Government, the Hon'ble Supreme Court, in catena of decisions, has observed that there must be greater restraint on the part of judiciary while deciding on economic statutes. It however, further added that judges should be activists in defending the civil liberties and fundamental rights of the citizens. This is necessary because, though the legislature represents the will of the people and works for their welfare, there can be exceptional situations where legislature, though elected by the people, may violate the civil liberties and rights of the people.

The justification often given for judicial encroachment into the domain of the Executive or Legislature is that other two organs are not doing their jobs properly. Even assuming this is so, the same allegation can then be made against the judiciary too because there is a huge number of cases pending in Courts.

If the Legislature or the Executive are not functioning properly, the remedy does not lie with the judiciary. This is so because indiscriminate action by the latter will not only violate the delicate balance of powers enshrined in the Constitution, but there also exist the fact that the judiciary does not have the expertise or the resources to perform the functions of the legislature or the Executive.

Harmony among Three Wings of the Government – in the Public Interest

Unless the three wings of the State understand each other better, they will not be able to function effectively in the interests of our nation and our people at large. The three wings have well defined roles and functions under our Constitution. However, all the wings have a common goal, which is the fulfillment of the hopes of the founding fathers of our Constitution and as spelt out so clearly in our magnificent Constitution.

At the end, the fact remains that for the success of Indian democracy people want not only an independent and efficient judiciary but also an effective Legislature and Executive, who can uphold the Rule of Law in true letter and spirit as enshrined in the Constitution of India.
