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RELATIONSHIP BETWEEN THE EXECUTIVE, LEGISLATURE AND JUDICIARY

Transparency, accountability and adherence to the rule of law depends on a systemic arrangement and coherency between the three arms of the state, viz. the Executive, Legislature and Judiciary. In the US, the model of separation of powers as envisaged by Madison was implemented to maintain a system of checks and balances that ensured that the separation remains unhindered by counterproductive forces. As was stated in the Federalist Papers, by Madison,

“You must first enable the government to control the governed; and in the next place, oblige it to control itself. A dependence on the people is no doubt the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.”

The judiciary provides the people the necessary “auxiliary precaution” required to ensure that the government functions in favor of the people, for their upliftment and for the betterment of society.

The Founding Fathers of our Constitution were aware of the dangers that successful governance may face when one branch of government wielded too much power. They therefore devised methods by which all arms are able to function independently, yet ensuring balance between each other, so as to operate national governance in an effective manner. In Madison’s words, “ambition would counteract ambition”, thus keeping Executive, Legislature, and Judiciary within the limits of their legitimate functions. When the Executive asserts itself in a manner that it accords to itself increasing power and an unusually high level of control over state functions, the Judiciary has a right to exercise its constitutionally-mandated role and exert pressure by providing oversight in order to maintain the balance among co-equals.

The principle of democratic accountability is the mode through which the constitution invests all public authority with legitimacy. While the

legislature is directly elected by the people, the executive is made politically responsible to the legislature through the principle of collective responsibility of the Cabinet and the individual responsibility of the Minister. The executive is made legally responsible to the people by allowing the latter to challenge executive decisions in court using the facility of judicial review. Judicial power is the power to interpret the constitution and laws and apply them, and to decide controversies arising between state or private parties. Judicial power also includes the power to take corrective action whenever other branches of the government fail in their duty to respect the rights of the citizens and protect them. Judicial determination of whether the other branches of government are, or are not, functioning in favor of society cannot be said to constitute “lawmaking”, but is a proper exercise of judicial discretion where standards established by the constitution are not met. In Australia, where the native title case provoked unprecedented criticism against the High Court, Prof. H.P. Lee of Monash University wrote as follows:-

“Scurrilous abuse of particular members of the judiciary or attacks which question the integrity of judicial

institutions undermine public confidence in the courts and acceptance of their decisions. This is not to suggest that court should be immune from criticism. On the contrary, the judgment of the courts should be scrutinized and critically evaluated. But those who hold positions of power and influence in the country have a responsibility to ensure that the line between measured criticism of judgments and denigration of judges is not traversed. Constitutionalism in Australia is not enhanced by hostility directed against the judiciary which plays such a pivotal role in maintaining the rule of law.”

In many recent matters, the Supreme Court has refused to admit matters relating to economy and other specialized fields where only the government can take a viable decision.

Addressing the occasion of Golden Jubilee celebrations of the Supreme Court of India on 28 January 2000, the President of India said,

“the judiciary in India has become the last refuge for the people and the future of the country will depend upon the fulfillment of the high expectations reposed by the people in it.”

The Supreme Court of India is the guardian of fundamental rights of the people, and is thus endowed with great responsibility. Along with this responsibility comes caution of exercise of power. However, it is important to bear in mind that as the highest court of the land, the Supreme Court must be unhesitant to exercise its powers whenever an apparent need arises and whenever the fundamental rights of the people are infringed by other private or state actors. This is the cardinal duty of the Supreme Court of India, and this is what differentiates its functioning from other subordinate courts. Dr. A.S. Anand, former Chief Justice of India, 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. Policy matters, fiscal, educational or otherwise, are thus best left to the judgment of the executive. The danger of the judiciary creating a multiplicity of rights without the possibility of adequate enforcement will, in the ultimate analysis, be counter productive and undermine the credibility of the institution. Courts cannot "create rights" where none exists nor can they go on making orders which are incapable of enforcement or violative of other laws or settled legal principles. With a view to see that judicial activism does not become "judicial adventurism", the courts must act with caution and proper restraint. They must remember that judicial activism is not an unguided missile failure to bear this in

mind would lead to chaos. Public adulation must not sway the judges and personal aggrandizement must be eschewed. It is imperative to preserve the sanctity and credibility of judicial process. It needs to be remembered that courts cannot run the government. The judiciary should act only as an alarm bell; it should ensure that the executive has become alive to perform its duties".

The doctrine of separation of powers has been widely misunderstood to mean a staunch separation between administrative, legislative and judicial functions. However, this assumption does not hold good, especially in modern times, where the interrelationship between various organs of the State is vast and varied. These functions, therefore, cannot operate independent of each other, and, like spokes in a wheel, play their own independent, yet indispensable role in the governance process. Effective governance requires that all the abovementioned organs function towards the constitutional goal

of ensuring that each citizen enjoys the fundamental rights available to him. Whenever this constitutional goal is not espoused, partly espoused or infringed with arbitrariness, it is the inherent duty of the Supreme Court to take cognizance of its function as the upholder and protector of the Constitution, and eschew the act which curtails fundamental rights. Particularly, realization of the Right to Life, which has been interpreted to mean not mere animal existence, but fruitful living, can come only if the people enjoy their fundamental rights such as living in a healthy, clean and safe environment, compulsory education and access to basic amenities of life. Without these rights being protected, the spirit of Article 21 can never be realized. On various instances, the State failed to exercise its duty of providing these rights to the people, who often had to suffer for no fault of their own. Therefore, it became an imminent necessity for the Supreme Court to intervene in a timely manner and curtail the violation of fundamental rights, and further its duty to protect the rights of the people. Moreover, the fundamental principle of “separation of powers” has also been reiterated, quite emphatically, by the Constitutional Review Commission (2002) headed by a distinguished former Chief Justice of India.

In a democracy, the people are paramount, and it is the inherent duty of the executive, legislature and judiciary to perform meaningful roles in making the life of the common man better. In many instances, the Supreme Court has faced criticism for “usurping” the power of the executive. However, what is most often overlooked by all critics is the fact that where is the common man to go, when the executive fails to perform its duties properly? In many instances, the people have been promised better amenities, towards which significant amounts of money have been spent. However, many of those promises have never been fulfilled, and, on occasion, private players have taken undue benefit of this. Given these circumstances, it is incumbent on the Supreme Court to take the necessary steps to alleviate the dismal conditions of the people, and pay particular attention to the dismally depressed.

The Supreme Court has been the doyen of Public Interest Litigation. It cannot be denied that as a power regulator, the Supreme Court has two functions: it limits government arbitrariness and power abuse, and it makes the government more rational and its policies more intelligent. The Public Interest Litigation system only furthers

these and gives them true meaning. It is one of the many innovations that give life to the Supreme Court being the bulwark for the maintenance of democracy and a bastion of civil liberties. It is a potent instrument of social justice to bring about equality in result. It is used only after careful scrutiny of the issue at hand, and directions given only when necessary. It is often argued that the Supreme Court should maintain restraint and should not violate the legitimate limits in the exercise of its powers. However, this argument fails to recognize the constant failures of governance taking place at the hands of the other organs of State, and that it is the function of the Court to check, balance and correct any failure arising out of any other State organ. It is improper, therefore, to accuse the Court of taking unfair advantage of this instrument to further any vested interest. The only function of the court is to protect the rights of the people, and all its actions are directed to further this function. It must be realized that before criticizing the court, which serves as the whip hand of the people towards any wrong being done by the State, the other organs of governance latter must make sure that their conduct is exemplary and without fault, so as to deserve the trust of the people.

In the words of Alexander Hamilton, one of the Founders of the United States of America,

Are not popular assemblies subject to the impulses of rage, resentment, jealousy, avarice, and of other irregular and violent propensities? Is it not well known that their determinations are often governed by a few individuals in whom they place confidence and are... liable to be tainted by the passions and views of those individuals? The courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority.

The supremacy of the Constitution can be preserved in no other way except through the courts that would step forth and declare all acts “contrary to the manifest tenor of the Constitution void”. In the words of Hamilton,

"Without this, all the reservations of particular rights or privileges would amount to nothing."