

Judiciary's place atop the pyramid

The Vice-President's recent criticism of the judiciary has received a mixed response, but complaints about its lack of transparency and accountability — apprehensions also shared by the public — need to be addressed appropriately

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The story so far:

Vice-President Jagdeep Dhankhar recently raised certain issues with respect to the independence of the judiciary, its powers of judicial review and the judgment prescribing timelines to the President and Governor for their actions.

What is the current context?

The Vice-President expressed his views on various issues surrounding judiciary in a recent event. Firstly, he talked about the lack of transparency in the inquiry being conducted by a committee of judges in the aftermath of the recovery of huge piles of cash at a Delhi High Court Judge's residence. He questioned the legality of the procedure being followed in such cases that is not laid down under any law made by Parliament.

Secondly, he remarked about the recent judgment of the Supreme Court, in which the court had prescribed timelines for the President and Governors to take action on State legislations. The court had ruled that it could issue a writ of 'Mandamus' to these high constitutional offices in the event of inaction or inordinate delays.

Third, he raised concerns about lack of accountability of judiciary towards the public at large, unlike the legislature and executive. It was in the context of judicial review of legislation by Constitutional Benches as well as orders passed that encroach upon the executive domain. The provisions of Article 145(3), which require a minimum of five judges for adjudicating on constitutional validity in any matter, were made in 1950 when the total strength of the court was eight judges. He suggested that it may need to be revisited as the present strength is 34.

Finally, he opined that the top court has been utilising its extraordinary power under Article 142 (to provide complete justice in any case), in a way that undermines representative democracy.

A critical analysis

There have been views that the speech by the Vice-President doesn't befit the constitutional and ceremonial office that he holds. A critical analysis of the speech presents us with arguments in support and against the observations.

Apprehension about the opacity of inquiries conducted by the judiciary in the case of alleged misbehaviour by judges is widely shared by the common public. The Chief Justice of India should devise a procedure that provides for utmost transparency in such cases to instil confidence in the rule of law.

One of the underlying root causes for various issues concerning the judiciary is lack of accountability and transparency in appointments through the collegium process. A broad-based National Judicial Appointments Commission, with the CJI being provided a veto to have final say in the appointment process, would make the selection process more transparent and inclusive without compromising on the independence of the judiciary.

However, the recent order of the Supreme Court prescribing timelines to the President and Governors was well within its powers of upholding the constitutional principles. The two judges in this case had arrived at their conclusions based on various Constitution Bench judgments decided earlier. It is pertinent to note that similar timelines have also been provided in the Office Memorandum prepared by the Home Ministry in February 2016.

Similarly, 'judicial activism' by the courts, including its use of Article 142, has contributed significantly to providing justice to the needy as well as holding the executive accountable. Some notable orders under Article 142 include compensation for victims of Bhopal gas tragedy (1989), guidelines against sexual harassment at work place (1997), cancellation of coal-block licenses that were allegedly improperly allocated (2014), permanent commission of women officers in armed forces (2024), and directives to public officials with respect to demolitions (2024).

Further, considering the precedence developed in the past seven decades and pendency of cases in the Supreme Court, the current requirement of five judges for a Constitution Bench may be optimum.

Judicial review and its independence

Parliamentary democracy works on the principle that the executive is accountable to the legislature, which in turn is answerable to the people in every election. However, it is the judiciary which is the independent branch that upholds the Constitution and its principles in governance.

The doctrine of Parliamentary sovereignty is associated with the British Parliament. This is because there is no written constitution in the U.K. and Parliamentary laws are supreme for governance of the country. On the other hand, the concept of judicial supremacy is associated with the U.S. It is because the American Supreme Court has wide powers in interpreting their constitution as per 'due process of law'.

The Indian Constitutional scheme is a synthesis of Parliamentary Sovereignty and Judicial Supremacy. 'Judicial review' has been declared as a 'basic structure' of the Constitution in various judgments of the Supreme Court that has reinforced 'Constitutional sovereignty'. All the branches of governance should uphold the constitutional values through healthy separation of powers rather than confrontation.

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