

‘I’ll Be Judge, I’ll Be Jury’

In a rather unprecedented show of solidarity, angry parliamentarians are indicting the judiciary for assuming the role of cunning Old Fury of *Alice’s Adventures in Wonderland*. Annoyed with the Supreme Court for staying the operation of the law on quota for Other Backward Classes, they seem to be moving towards a collision with the judiciary – uneasy signs of which have been in the air for quite some time. Coming fast on the heels of these developments, in a polite standoff at a recent New Delhi conference of state chief ministers, both the prime minister and the chief justice of India reiterated their respective claims to their areas of jurisdiction – leaving us none the wiser about the borders that demarcate them.

Even as prime minister Manmohan Singh frowned upon “judicial overreach”, Supreme Court chief justice K G Balakrishnan welcomed its outcome as a desirable “tension” between the judicial and the legislative and executive branches. The source of the tension, however, lies in the vacuum created by the lapses of both the legislative and executive branches. Widespread revulsion at the performance of venal and intractable legislators on the floors of Parliament and state assemblies and outside, as well as an equally strong pervasive public frustration with a laggard and corrupt executive, have combined to produce a social void. Of late, the judiciary is giving the impression of stepping in to fill the vacuum by often forcing the executive to take action (against the privileged sons of politicians, as in the Jessica Lal case) or compelling Parliament to enact laws (for example, to curb sexual harassment at workplaces). This has encouraged the Indian urban middle class to repose its faith in the new-found concept of judicial activism, and to wish that the judiciary replaces the corrupt legislature and bureaucracy as the benevolent authority.

But there is a catch in this wishful belief. Barring a few recent cases of judicial intervention, which have had some positive effect on governance, the Indian judiciary on the whole has not displayed any spontaneous

will to act on behalf of the common people. The success stories, cited above, were the results of long legal battles by the rich relatives of the victims, or campaigns by social activist groups. Contrary to the image of a magnanimous judiciary, judicial activism is increasingly sliding into injudicious and irresponsible judgments heavily loaded against large sections of the poor and marginalised. To quote a couple of instances, thousands of workers have been uprooted due to court orders to shift polluting industries out of Delhi and slum-dwellers are facing removal to far outside the city as a result of a Supreme Court declaration that they have no right to notice before eviction or rehabilitation thereafter. In the short-sighted pursuit of delivering justice to some segments, such judgments are creating new long-term injustices for vaster sections of the population. Further, the breathtaking eagerness with which the judiciary has over the past decade upheld draconian laws like the Terrorism and Disruptive Activities (Prevention) Act (in 1994), the Armed Forces (Special Powers) Act (in 1997) and the Prevention of Terrorism Act (in 2004) portends an ominous future for the democratic rights of Indian citizens. A dangerous example of such judicial mindlessness was the 1995 Supreme Court bench verdict in favour of Hindutva which put the seal of approval on the politico-religious philosophy of the saffron brigade. Surprisingly enough, J S Verma, the then chief justice who headed the bench that passed the verdict, was to lament in May 2002 following the Gujarat riots that his judgment was being “misused” by many for narrow interests. In a lecture in Jabalpur recently, justice Verma asserted the need for “greater expertise and self-restraint of the judiciary...eschewing personal predilections and emotive responses.” A belated realisation when the damage had already been done!

In what is increasingly resembling a turf war among the power elite, the holier-than-thou moral stance of the judiciary vis-à-vis the legislature and the executive, does not cut much ice. Chief justices of the Supreme Court

have in the past noted that a large proportion of the judges in the lower courts are corrupt. The latest case of two judges of the Gujarat High Court engaged in a public brawl indicates that our honourable judges are not far behind the legislators in displaying their muscle power. Just as the right of parliamentary privilege is being used to protect corrupt legislators, the claim of independence of the judiciary may soon become a euphemism for providing immunity to aberrant judges. In these circumstances, saner elements in the judiciary should welcome the proposed National Judicial Commission to inquire into complaints against errant judges and evaluate their performance. While it is indeed necessary to appoint more judges to clear the arrears, it is more important to lay stress on the quality of the appointees than in filling the vacancies with professionally incompetent and morally dishonest candidates. **EPW**