

**Striking a balance —Shehryar Saif**  
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The government's message — and the mission — is that all institutions, may it be parliament, the executive or the judiciary, should remain within their constitutional limits and thus show complete respect for each other for the sake of Pakistan and Pakistanis. The country belongs to the masses and all the institutions are answerable to them and them alone

An eminent jurist and human rights activist of world fame has written an article that dwells upon another aspect of the Supreme Court's verdict or the short order on the National Reconciliation Ordinance (NRO).

The said article has touched upon the most pivotal issues — balance of powers, checks and balances and the dichotomy of powers. The latter one has also been sometimes described as dichotomy of power on the basis of three separate organs of the state, namely the legislature, executive and the judiciary.

For sure, these questions form the very basis of the state machinery's functioning or plainly speaking, of the edifice of governance not only in our country but throughout the world wherever even a modicum of democracy is in place.

Our own learned judges from the higher judiciary, including Chief Justice Iftikhar Muhammad Chaudhry, have been known torchbearers of the separation of powers. Throughout Justice Chaudhry's struggle for the restoration and freedom of judiciary prior to his re-elevation to his constitutionally due position of the chief judge of the country, their lordships have always been talking about the limits of the institutions besides "lamenting that the theory of separation of powers between the judiciary, the legislature and the executive had not been respected. The NRO judgment has disturbed the equilibrium by creating an imbalance in favour of the judiciary" (sic: quoting the lawyer writer).

Sifting through these remarks of the eminent lawyer writer, the inference that one can draw at the outset is that good governance or running of public affairs is not possible unless and until all the institutions work in unison and on the basis of equality and mutual respect without encroaching upon each other's areas of responsibility or authority. This is in fact the public will as manifest in the Constitution of Pakistan and as manifest in the collective wisdom whose ascertainment is no more a difficult thing to do given the advancement in the fields of communication and information.

Whenever a controversy arises that is replete with sensitivities of sorts, recourse to 'public will' has to be made in the end since the masses are the final arbiters of any situation or occurrence.

Certainly, recourse to this track of public wisdom is the only way of maintaining equilibrium and balance of powers or the direly needed harmonious working relationship among all the pillars of the state.

It is based on natural principles of justice, which prescribe a system of checks of balances so that no institution or its top guns overstep their defined limits and thus create chaos and disorder. We have already witnessed and experienced many examples of these overstepping overtures in the past in the shape of many a martial law and lately in the form of General (ret'd) Pervez Musharraf's undemocratic steps that were aimed at subduing the judiciary.

Some people call that moment as a blessing in disguise. Not that they endorse anti-judiciary moves of the Musharraf era but that they think had Musharraf not overstepped his limits, the nation as well as the institutions would not have awakened to their national obligations. And they did wake up subsequently and thus started the journey of realisation and transformation. Luckily, we are passing through that phase of refinement whose consolidation is underway courtesy the cohesiveness among all the national institutions and among all other alive and responsible segments of our society.

The judiciary's role is commendable in taking the lead, but the government has not lagged behind. It has moved forward inch by inch with sagacity and caution, sincerely aiming at maintaining the equilibrium although our political history contains many instances when politicians and their lackeys have condemned higher courts' verdicts (even stormed the apex court building) on award of 'unfavourable' (to these politicians) verdicts.

The PPP-led government, especially President Asif Ali Zardari and Prime Minister Gilani have proved altogether different from that political lot. They respect the judiciary and the verdicts passed by the judiciary. Not on a single occasion have the PPP leaders passed any such remarks or practically conducted their affairs that stand in the way of the judiciary.

The government's message — and the mission — is that all institutions, may it be parliament, the executive or the judiciary, should remain within their constitutional limits and thus show complete respect for each other for the sake of Pakistan and Pakistanis.

The country belongs to the masses and all the institutions are answerable to them and them alone. It is this spirit that has come into play at the time of announcement of the Supreme Court's short order on the NRO. The learned judges have acted according to the wishes of the people who wanted an end to all kinds of dubious deals and transactions.

It is believed that the superior judiciary will again act with the same spirit and undo the damage caused by the disturbance of any kind of equilibrium and put the country back on the track of mutual trust, greater national unity and inter-institution harmony.

People are happy that their saviours, the honourable judges, are convinced that law, the Constitution and codes of conduct or ethics are meant not only for obeying laws punctiliously for the sake of it but also to create an enabling environment for all segments to survive according to their own priorities — as long as any of their actions or plans do not lead to encroachments, imbalance and tilts in favour of one and against the other.

If, however, one were to analyse as to why the judiciary had to step into the realm of governance to supervise the availability and fixation of prices of sugar or to pass orders for posting and transfer of any government functionary, only one thing can be said. It is an indirect message to the executive and the legislature controlling the executive through the parliamentary system to gear itself up for taking up its responsibilities towards good governance with greater diligence. Painting it negatively as an encroachment by one institution means going to the farthest end. Much depends on the government's response which, more or less, is democratic and moderate. That is a good sign as well as a message of greater reconciliation. Other institutions are expected to reciprocate this approach in the same coin.

The writer is a freelance columnist.