Sink your differences

It is disconcerting that differences between the executive and the judiciary are emerging often in the public domain these days. By raising the question whether the judiciary does not trust the Prime Minister to make fair judicial appointments, and harping on the need to maintain the balance of power between the executive and the judiciary, representatives of the Union government have risked the impression that they are putting the judiciary on the defensive. Read between the lines and the executive's profound dissatisfaction with the state of play in relations between the two wings is evident. Union Law Minister Ravi Shankar Prasad is undoubtedly entitled to hold the view that the Supreme Court's 2015 verdict striking down the law creating the National Judicial Appointments Commission (NJAC) reveals the judiciary's distrust in the Prime Minister and the Law Minister. His question whether an audit is needed to determine what has been lost or gained since the collegium system was created in 1993 is not without merit. However, it is debatable whether these issues should have been raised in public, that too in the presence of the Chief Justice of India and his fraternity. Chief Justice Dipak Misra seemed coerced into responding that the judiciary reposes the same trust that the Constituent Assembly had in the Prime Minister, and that the judiciary indeed recognised and respected the separation of powers enshrined in the Constitution. There was really no need for such a public affirmation of first principles in a democracy.

However, it does not mean that major concerns over whether there is real separation of powers, whether public interest litigation has become an interstitial space in which judges give policy directives, and whether the country needs a better system than the present one in which judges appoint judges should be brushed aside. The present collegium system is flawed and lacks transparency, and there is a clear need to have a better and more credible process in making judicial appointments. It is clear that differences over formulating a fresh Memorandum of Procedure for appointments are casting a shadow on the relationship. It is best if both sides take a pragmatic view of the situation and sink their differences on the new procedure, even if it involves giving up a point or two that they are clinging to. For a start, they could both disclose the exact points on which the two sides differ so that independent experts will also have a chance to contribute to the debate. If it is the right to veto a recommendation that the government wants on some limited grounds, the Collegium must not be averse to considering it. Resolution of this matter brooks no further delay.

Revving up infrastructure spending is necessary, but not sufficient

END