

## First among equals

Legislature should have the independence of making laws, the executive should have independence in taking decisions,” Prime Minister [Narendra Modi](#) said on Sunday. The law minister and the finance minister have also spoken on the separation of powers, which is a load-bearing beam of the fundamental structure of the Constitution. However, while the prime minister has stressed its need, he has done so in a way that suggests that the government would like to see the legislature, the judiciary and the executive as silos at arm’s length from each other, with each allowing the others to go about their business. Law Minister Ravi Shankar Prasad has said that if the people can trust the prime minister with the nuclear button, surely he can be trusted to appoint judges through his law minister. This is an apples and pears argument which seems to misunderstand, or to deny, that in the constitutional scheme, separation of powers is also a way of institutionalising checks and balances.

Finance Minister [Arun Jaitley](#) has said that the judiciary may intervene in the event of executive failure, but only to issue directives to spur it into action. It should not commit judicial overreach by getting into executive functions, like organising the running of sports organisations or dealing with the non-performing assets of banks. True, but Jaitley has neglected to acknowledge the reality that much of progressive law was developed in courts through the innovation of public interest litigation, precisely because the legislatures had failed to enact laws in the public interest. The finest fruit of this process is the entire corpus of environmental law. If the ambit of the PIL territory has widened and the people regard the judiciary as the court of first resort, it only betrays a lack of confidence in securing executive or legislative action.

The prime minister affirmed the nation’s allegiance to the balance of powers, but stressed that each pillar of democracy should be aware of its “limits”. The president drew attention, instead, to the “intricate and delicate balance” between them. The pillars of democracy are not supposed to stand coyly aloof, careful not to trespass. They were designed to lean into each other with countervailing force, in order to hold up the edifice of democracy. Besides, amidst the high-minded talk of the equality of the three institutions, it is all too easy to forget that the judiciary is the first among equals. It is the custodian, interpreter, upholder and defender of the Constitution. The power of judicial review sets it above the others. If the government tries to even the odds, it must run the risk of being perceived to be in search of a “committed judiciary”, a mercifully short-lived institution which India’s people cast into the dustbin of history in 1977.

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