

Times of India

Substance is all that matters

Abhishek Singhvi 5 October 2009, 10:17pm IST

Recent news reports heralding the inauguration of the new Supreme Court of UK reminded me of my many years of student life in that country. Those years taught me that the UK is the best validation of the principle that it is the substance which matters and not the form.

UK has never had a formal separation of power between the judiciary and legislature/executive. I have watched with disbelief the Lord Chancellor who was a unique three-in-one: chief justice, Speaker of the House of Lords and also law minister of that country. Law Lords sat in business suits in a small wing of parliament in groups of five to hear cases as UK's apex court. During the lunch break they would eat a few rooms away in the same restaurant, often sitting at the same table as lawyers appearing before them. Astonishingly, in those early years, some lawyer-sons even appeared before father-judges. Lord Oliver and his lawyer son were a case in point. There was no consternation, no PIL and no scam.

Several House of Lords judges who were entitled to serve as apex court judges till 75 years chose to leave at 72 or 73. Lord Oliver was again a case in point, saying he wanted to enjoy his 'Vanaprastha', reasonably fit and healthy to do things which he had always desired in his case, principally, playing golf and travelling to exotic locations. The selection of judges to the UK high court, Court of Appeal or House of Lords seemed completely arbitrary and indeed, incestuous. There was no judicial commission, no collegium, no transparency and appointees were known to the world only after the event. All this remained true till recently.

The question is, did all this make the UK legal and judicial system any less independent? Or is the creation of a new supreme court the first move towards judicial independence? Anybody who knows anything about the UK would answer both the questions emphatically in the negative. Judicial independence in Britain has been touted as a role model globally. Vigorous and fiercely independent judicial review of executive and administrative action within the limits of the principle of no judicial review of legislative action has been the hallmark of the British system. Aberrations have been rare. Despite the absence of technical, formal or institutional structures and safeguards, neither the British public nor international observers have doubted the transparency or independent nature of the justice delivery system.

All this has been possible because it is the substance which matters, much more than the form. All manner of prohibitions about children practising in courts where parents sit will not control or diminish the malpractices of those relatives. A judicial commission or a collegium will ultimately prove only as good and successful as the individuals who operate it. Greater emphasis on institutional structures rather than operational reality has always been the bane of Indian administration. It is not dissimilar to the philosophical dichotomy aptly illustrated by Amartya Sen when he makes the distinction between "Neeti and Nyaya". 'Neeti' is about arrangements and rules, about the right thing to do and 'Nyaya' is about what is happening in the real world. There is perennial clash between the intentions of the two and, unfortunately, it is more gaping and obvious in India than in the UK.

We Indians have to get rid of our excessive fascination for forms, safeguards, procedures and structures. We have to go for the jugular and evaluate projects, institutions, policies and paradigms only on the basis of results and operational efficacy. In the larger context, English poet Alexander Pope remains relevant. He aptly said, "For forms of government, let fools contend; Whatever is best governed, is best."

The writer is an MP and a jurist.