

Is India Heading For A Stand-off Between The Executive And The Judiciary?

—By Wing Commander Dinesh Mathur, VSM (Retd.)

Group Discussion is a valuable tool for employers to assess how candidates interact and contribute within a group setting, providing insights into their interpersonal skills and ability to work collaboratively. A Group Discussion situation purposely simulates a real-time work environment, allowing employers to observe how aspirants engage with their colleagues and contribute to achieving group goals. Organisations also use Group Discussions as a screening tool to identify candidates who meet their basic requirements and possess the necessary soft skills. Group Discussions have become a popular technique since they offer a glimpse into a candidate's personality, leadership potential, ability to collaborate, communication skills, and other valuable qualities. From a candidate's perspective, Group Discussions provide an opportunity to stand out among other applicants and maximise their chances of success in stiff competition.

Conversely, assessors can evaluate aspects of a candidate's personality that may not be visible after a written test or personal interview. To ensure their success, candidates must strive to have a broad general awareness of current topics, in addition to their academic qualifications. To achieve this, focused preparation for participating in competitive group discussions is not only desirable but considered essential. To stay abreast of common trending topics, candidates should regularly read newspapers and make efforts to remain informed about current affairs, particularly significant national and international events.

Group Discussions are now a common part of the selection process for positions in Public Sector Banks (PSBs) and other organisations. For shortlisting candidates to select Probationary Officers in a PSB, ten candidates were called to take part in a Group Discussion. When given the chance to select a topic from the three offered, they chose the above topic for the Group Discussion. The candidates, dressed formally, arrived and, after their identities were checked, were asked to sit in a semicircle. The three moderators then conducted a detailed briefing of the



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candidates on the conduct of this Group Discussion. In particular, they were apprised of the do's and don'ts of this interaction, and were asked to ensure that all candidates are given an opportunity to express their views on the topic. Subsequently, they were allotted Identification Numbers, which were displayed on their shirts. They were asked to address each other by these numbers, and not by name. The candidates were then given five minutes to recapitulate their ideas on this topic and, if they wished, could note them down on paper, which they could refer to while speaking during the discussion. Candidates were asked to conclude this discussion in 30 minutes.

The Group Discussion then commenced as described below:

Candidate No. 1 : Good morning, friends. We have chosen an interesting but somewhat disturbing subject for our discussion today. You would agree that the consequences of this stand-off are certainly grave and not in our national interest, more so for the efficient functioning of our democracy, which is the largest in the world, and one for which India is so proud. So, the stakes

are high in view of this apprehension. We are required to analyse the reasons for this unfortunate development and suggest what must be done to minimise or obviate this kind of controversy in our country. Let me provide you with a brief background of this developing unsavoury situation. Friends, the recent historic judgement by the Supreme Court in the State of Tamil Nadu vs. the Governor has triggered this issue. Consequent to this judgement, our President, exercising her powers under Article 143 of the Indian Constitution, has sent a 'reference' to the Supreme Court asking 14 questions on the extent of the legal powers of Governors and the President. As of now, the Supreme Court has not responded to this reference, yet this issue has the potential to emerge as a stand-off between the Executive and the Judiciary. You all may now express your views on this subject.

Candidate No. 3 : Friends, I would like to inform you that this type of stand-off between the Executive and the Judiciary has been witnessed in our country several times in the past. However, the issues in these conflicts have varied in nature. I believe that to understand why these conflicts arise, we must appreciate the delicate balance between the defined roles of our Judiciary and the Executive, as enshrined in our Constitution.

Candidate No. 10 : Quite right.

Candidate No. 7 : I recall a few instances of such a stand-off in the past. In 1967, the Judiciary defended the Fundamental Rights in the Golak Nath case against the supremacy of the Parliament. This led to the establishment of the "Doctrine of Basic Structure" after the Government brought three arbitrary Constitutional Amendment Acts in 1971. Then, on October 16, 2015, the Supreme Court struck down the National Judicial Appointments Commission (NJAC) that the Government had brought. The Court also struck down the 2021 Tribunal Reforms Ordinance. Of course, we are aware that the Supreme Court has expressed its concern over the inordinate delays in clearing the collegium's recommendations by the Government,

which undermines the entire system of appointing judges to the judiciary. These are some of the well-discussed examples of such a stand-off between the Executive and the Judiciary in the past.

Candidate No. 9 : Yes, you are right, my friend. We know the three important pillars of our democracy are the Legislature, the Executive and the Judiciary. The media is additionally considered the fourth pillar of our democracy. Our Constitution has provisions to divide powers between the first three pillars. For example, Article 50 stipulates that the State is obliged to separate the Judiciary and the Executive, even though this provision is not enforceable, being under the Directive Principles of the State Policy. Vide Article 121, the conduct of judges cannot be discussed in Parliament except during the process of removal of a judge. These are important provisions.

Candidate No. 7 : Further, let me add in this regard that vide Article 361, our President and Governors have immunity from court proceedings. Also, the separation of powers is part of the basic structure of our Constitution. So, we can see all these provisions aim to obviate the interference of one organ over the other.

Candidate No. 8 : Friends, I wonder if there are such provisions in our Constitution, then why are there conflicts between these three organs?

Candidate No. 1 : Yes, this is a relevant question. There are reasons. Firstly, as courts have the power of judicial review of the legislation passed by Parliament, this has often led to conflicts. There are examples of such conflicts, we have just mentioned. Secondly, the collegium system of appointments of judges was created by the Supreme Court and is not a part of our Constitution. Appointments and transfers of judges have been a matter of conflict between the Executive and the Judiciary; as both want their say in this matter. Due to this reason, the Judiciary did not agree to the formation of the National Judicial Appointments Commission (NJAC) proposed by the Executive and considered it to be an interference with the independence of the Judiciary.

Candidate No. 7 : Moreover, the Supreme Court has been vested with wide powers of broad original and appellate jurisdiction. This has led to several controversies regarding the Constitutional and political order. Furthermore, courts often favour the Fundamental Rights and Personal Liberty of the people when they come into conflict with the Directive Principles of State Policy, which the Executive may not always prioritise. These are some of the main reasons for a tussle between the Executive and the Judiciary.

Candidate No. 3 : Friends, we have adequately talked about the Constitutional

provisions which aim at avoiding a stand-off between the Executive and the Judiciary, and highlighted some other reasons that are often responsible for such conflicts. I suggest we now talk about the current situation, which has led to a tussle between these two pillars of our democracy.

Candidate No. 5 : Yes, I agree with you. Let's talk about the present case.

Candidate No. 9 : For some time, we have been finding that Governors of several States, mostly governed by the opposition parties, are having conflicts with their State Chief Ministers. This has led to such a grave situation where several State Governments are fighting court cases against their Governors. In the instant case, the Governor of Tamil Nadu did not clear several Bills passed by the Legislature of the State for a considerable period. Not only that, even when some Bills were cleared for the second time by the Tamil Nadu Legislature, the Governor still decided to sit over the Bills and declined to clear them. Thereupon, the Tamil Nadu Government approached the Supreme Court in this regard, and in April 2025, the Supreme Court pronounced a historic judgement to resolve this serious issue.

Candidate No. 6 : You are right. This very significant judgement has led to a situation which is perceived as a stand-off between the Judiciary and the Executive, and also has a direct impact on the Union-States relationship.

Candidate No. 1 : Let me highlight some important aspects of this judgement. Firstly, the Governors are bound by the aid and advice of the State Cabinet, except when the Constitution confers discretion. Secondly, Governors can't exercise pocket veto by keeping Bills enacted by the respective Legislatures pending indefinitely, or kill them by withholding assent, or refusing to return Bills. They are bound to grant assent on the second time of asking. Thirdly, the Supreme Court set timelines for Governors and the President in dealing with Bills presented under Articles 200 and 201 of the Constitution. You will be surprised to know that in the Tamil Nadu case, some Bills were pending for more than two years.

Candidate No. 7 : So, it appears that the Tamil Nadu Governor had decided to sit over these Bills for such a long duration due to some political reasons to obstruct the functioning of the Legislature and the Government of Tamil Nadu. This is really something unprecedented and not at all considered appropriate for the high Constitutional appointment of a State Governor. In my opinion, this unusual conduct of the State Governor certainly needed some unusual resolution by the Supreme Court.

Candidate No. 3 : Yes, the Supreme Court exactly did that. To resolve this

issue once and for all, the Supreme Court decided to exercise its powers under Article 142 "to deem assent", which meant that these Bills were considered to have been given assent by the impact of this significant judgement of the apex court.

Candidate No. 9 : Not only this, the Supreme Court went ahead to prescribe a 3-month deadline for the President to decide on a Bill referred by a State Governor. It further held that a Governor must act "forthwith" or within one month on re-enacted Bills. In case a Governor withholds assent or reserves a Bill for the President's consideration, the judgement held, this must be done within three months of its presentation. These are some highlights of this Supreme Court judgement.

Candidate No. 2 : But there has been a significant impact of this judgement on the Executive of our country.

Candidate No. 4 : Yes, you are right.

Candidate No. 1 : The Government felt that this judgement was an encroachment on the powers of the Executive. In this regard, the Vice-President of India openly criticised the Supreme Court's judgement. He was particularly critical of the time limit imposed by the Supreme Court on the President of India. Subsequently, some other Legislatures were also quite critical of this Supreme Court judgement. All this resulted in the President of India acting under Article 143, also known as 'advisory jurisdiction', to raise a Presidential reference to the Supreme Court, asking 14 questions on the extent of powers of Governors and the President of India.

Candidate No. 7 : Some of the key questions asked by the President are: Whether the President and Governors must follow the judicially prescribed timelines despite the Constitution being silent on such timeframes? Are such Executive actions justifiable before the courts before a Bill becomes a law? Is "deemed assent" constitutionally valid, and can the court impose procedural directions on the President or Governors? Can Article 142 be used to override express Constitutional provisions? And can the President's discretion under Article 201 be subjected to timelines or judicial review?

Candidate No. 9 : Yes, this Presidential reference is now being viewed as a stand-off between the Executive and the Judiciary. In this significant reference, the Union Government has essentially asked the Supreme Court to elaborate on a judge-made law. Let me remind you, friends, this marks only the fifteenth time since Independence that such a reference has made its way from the President of India to the Supreme Court. In other words, this reference effectively doubts the validity of a judgement in a case where the Government of India was a party.

Candidate No. 4 : Yes, I agree with you.

Candidate No. 10 : I wonder, can the Supreme Court refuse to answer these questions?

Candidate No. 1 : Your doubt is quite valid. Please allow me to explain the scope of this Presidential reference. The Constitution's Article 143 is to be used by the President when he/she wishes to obtain the Supreme Court's opinion on a question of Law or Fact. This 'opinion' under Article 143 has a distinct character. While the Court's opinions in such references are not binding on the President, they have historically played a vital role in Constitutional interpretation. The Supreme Court can certainly refuse to respond to the President's request, unlike any other litigation before it, where it has to pass judgement and decide the case. In another case earlier, the Supreme Court held that for "good and proper reason", it declined to answer any question referred to it by the President under Article 143(1). In 1993, the Court also declined to answer such a reference by the President under Article 143.

Candidate No. 6 : So, in this case, the Court may also decide to refuse to answer these questions raised by the President. Number 2, I think you would like to say something?

Candidate No. 2 : Yes, that could also happen. I think we are only guessing.

Candidate No. 7 : Let me clarify that there is only one situation when the Supreme Court is bound to answer a reference, if it is under Article 143(2), where the President seeks the Supreme Court's opinion about a dispute arising out of a treaty, agreement, etc. signed by India. Further, the Supreme Court has also held that the President can't use Article 143 to raise a question already decided authoritatively in a Supreme Court judgement and advisory jurisdiction can only be invoked when a dispute as to a Fact or Law is unanswered by the Supreme Court.

Candidate No. 9 : Yes, due to these reasons, some legal experts opine that the Union Government wasn't adequately advised in seeking such a reference, which doubts the validity of a judgement in a contested case where the Union of India was a party. It is also argued that some reference questions pertain to whether a Governor is to act on the aid and advice of the Cabinet when the State presents a Bill. The Supreme Court has already answered these questions in judgements in both the Punjab Governor's and Tamil Nadu Governor's cases. Moreover, a nine-member bench, in Ahmedabad St. Xavier's College Society vs. State of Gujarat in 1974, has also held that the Supreme Court's advisory opinions aren't binding on the Supreme Court acting in adjudicatory jurisdiction. But this

reference has raised several other questions as well.

Candidate No. 3 : I agree with you. Given the above facts, we believe that there may be other reasons for the Union Government to pursue this Presidential reference at this point.

Candidate No. 6 : Yes, that is why this Presidential reference is being considered a stand-off between the Executive and the Judiciary. I am also wondering whether a dispute between a State Government and its Governor is considered a Union-State dispute.

Candidate No. 1 : No, this is not considered a Union-State dispute. The fact remains that though the President appoints Governors, they are not part of the Union Executive. A Governor is constitutionally the Head of State of the State Executive and, therefore, when a State Government raises a dispute against its Governor, it is not a Union-State dispute. Am I clear?

Candidate No. 8 : Well, explained, Number 1.

Candidate No. 7 : Let me add, in the present reference, the Government has essentially asked the Supreme Court to elaborate on the judge-made law and answer some questions, and the court has an opportunity to answer them. The Supreme Court will take up this reference in due course of time, and the case will eventually go to a Constitutional bench of five judges. The authoritative answers provided by the Supreme Court will only resolve this stand-off. However, if these answers do not satisfy the Union Government, this stand-off may continue.

Candidate No. 9 : I feel political differences between the Union Government and Opposition-ruled State Governments have been the principal reason for this stand-off. Incidentally, the Supreme Court had adopted the timelines prescribed for the President in the Office Memorandum of the Home Ministry while passing this judgement. It is hoped that this reference will settle the issues surrounding these Constitutional provisions that are so critical for the efficient functioning of our democracy and federalism. In the instant case, both the Union Government and the Tamil Nadu State Government must rise above political considerations and appreciate the repercussions of this conflict. Resolution of the issue after receiving the judgement of the Supreme Court is vital for our national interest.

Candidate No. 5 : Friends, while we would like this discussion to continue, the time allotted to us is now over, and we must conclude. Will someone come forward to conclude?

Candidate No. 7 : If you all agree, I can summarise.

Candidate No. 6 : Yes, Number 7, please go ahead.

Candidate No. 7 : Well, we had an extremely informative discussion on this legal issue, which is considered significant for the protection of unity and democracy of our country. At the outset, we highlighted that the consequences of this stand-off are certainly grave. The background of the present stand-off was then discussed in detail. Defined roles of the Judiciary and the Executive, as enshrined in our Constitution, were discussed at this stage. Thereafter, reasons for such stand-offs were pointed out, and past examples in this regard were quoted. The current case, which has led to this stand-off, was then discussed in sufficient detail. Important aspects of the Supreme Court's judgement under discussion were highlighted, and how the Executive has reacted to this judgement was brought out. Salient aspects and scope of the Presidential reference were then mentioned. Towards the end, some suggestions to resolve this stand-off were also discussed. That's all, friends.

Thanks, and you all have a nice day.

Critical Analysis of Candidates' Performance:

Good: 1, 7 and 9

These three candidates have contributed significantly towards this Group Discussion. Since Number 1 was familiar with this topic, he grabbed the initiative to start the discussion. Towards the end, Number 7 came forward to conclude the discussion. These candidates brought out quite a few new aspects of this topic, which kept the discussion lively and interesting. They spoke with confidence, and other group members also appreciated their effort. The discussion was conducted in a cordial atmosphere due to the cooperation extended by all group members. Given these reasons, the performance of these candidates has been assessed as 'Good'.

Average: 3 and 6

These two candidates were also seen to be interjecting a few times. They also contributed to the smooth conduct of this GD by guiding the discussion to proceed in the desired direction. However, it became apparent that they did not possess much information to ensure a winning performance. They allowed other candidates to speak, which was positively noticed. They needed a comprehensive preparation to effectively participate in a competitive Group Discussion like the present one. Owing to these factors, their performance has been adjudged as 'Average'.

Below the Average: 2, 4, 5, 8 and 10

These five candidates barely took part in this discussion. It appeared they were not conversant with this topic and had nothing much to contribute. Due to their limited information base on this subject, they lacked self-confidence as well. They were merely seen to be agreeing or appreciating other candidates, who were actively participating in this discussion. As a result, their performance has been assessed as 'Below the Average'.

CSR