Supreme Court's 2016 Report Card

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The Supreme Court has spent much of the year in tussle with executive and legislature over Judges Appointment to assert its independence.

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What is the tussle between Judiciary and executive?

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- The tussle started in October 2015 when the judiciary delivered its verdict in Supreme Court Advocates-on-Record Association v. Union of India.
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- In this case, the Supreme Court struck down the 99th constitutional amendment and consequently the National Judicial Appointments Commission (NJAC), which had been created to replace the collegium.
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- The NJAC – a body comprises of law minister, two eminent laypersons and 3 senior-most judges, including the CJI. It was being viewed as removing the primacy that the judiciary enjoyed in selecting its own members and therefore it had to be quashed.
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- The verdict found that the collegium system which was in place to appoint judges was part of the Basic Structure Doctrine.
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- In December 2015, the Supreme Court directed the executive to prepare a draft memorandum to lay down the procedure for the collegium's functioning and for its reform.
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- Since then, there has been a constant back and forth between the two wings.
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What are the two flawed decisions of Supreme Court in 2016?

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- Two decisions from the past year exemplify the court's unflattering outlook on fundamental rights.
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- Subramanian Swamy v. Union of India – The SC upheld the Colonial era criminal defamation law, sections 499 and 500 of the Indian Penal Code.\n
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    - The judgment had a chilling effect on the freedom of speech and expression. The verdict had brushed aside all the legitimate concerns by pointing to reasonable restrictions under Article 19(2).
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    - In this case, SC conceived a new concept of "Constitutional Fraternity" – assurance of mutual respect and concern for each other's dignity. But it does not find any legal mention in the Article 19(2), which contains the legal basis for restricting speech.
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- The second decision delivered on November 30 in which the court directed that all cinema halls in India play the National anthem before the screening of any film and that persons present in the hall compulsorily stand up to show their respect.\n
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    - The order indulged in rule making that ought to be the prerogative of Parliament.
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    - The order shows the complete disregard for basic liberties.
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    - The court assumed the role of super legislature, having tasked itself with power to impose its own brand of distorted nationalism.
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What is the Consequence of these decisions?

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- These verdicts set a poor example for high courts to extend the use of their writ to perform legislative functions.
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Supreme Court’s legitimacy under pressure

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- Despite its interim order in 2013 making the securing of Aadhar card optional, it failed to adequately enforce its direction. Every day the government and its agencies extend the use of Aadhar Unique ID and its linking with essential services.
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- It failed to haul up the government for contempt of its orders and yet to hear concrete arguments on the issue.
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- Going by this issue, the court’s recent direction in setting up of a five-judge bench to rule on the constitutional validity of the demonetisation notification, this step would also be rendered useless by the time it gets around to hear the demonetisation issue.
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- These cases showcase the supreme courts lacking moral courage to face the public pressure.
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Conclusion

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Thus, an independent judiciary is far from being one that appoints its own members. It is the one that possess the will to resolve the hard cases in a manner that enriches the finest values of our constitutional tradition.

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