

Judicial Distancing: Cure to the ‘virus’ in the edifice of Justice Administration.

-Mudit Ahuja

“Not only must Justice be done; it must also be seen to be done.”

-Lord Chief Justice Hewart¹

With the nomination of the former CJI to the Rajya Sabha, the Judiciary has yet again lost the faith of the citizens, the very interests of whom it seeks to protect. The sacrosanct principle that ‘Justice should not merely be done but also seen to be done’ is embedded in the very concept of Justice.² The Judiciary has a significant role. It is in a parliamentary democracy that the vigilant Judiciary has kept the majoritarian instincts of any sort under surveillance. The faith in the governance concomitantly the Republic will collapse if comes a day the Judiciary loses its independence, the basic feature of our very own holy document, The Constitution of India.

The question on independence of the judiciary arose when Justice Chelameshwar along his brethren held a press conference expressing concern over the arbitrary manner in which Justice Misra was running the top Court.³ No doubt the reigns of the topmost institution were handed in the great hands of the integrate Justice Gogoi. His tenure as the Chief Justice of India coincided with decisions on several enormously important and politically sensitive issues including the Ayodhya⁴ and the Rafale⁵ deal which were seen controversial and tilted on the side of the government. Not long that the flames from the scornful press conference were yet to be extinguished, the recent nomination, fuels the already disastrous fire.

It is conceded that similar appointments have been made in the past, for example, Justice Ranganath Misra was sent to the Rajya Sabha but there was huge time interval between the two and in the interim he had headed the National Human Rights Commission but this particular nomination is to be analysed amidst the diminishing faith of people in the transparency and functioning of the Judiciary. After this nomination, it is hard to deny that the government is

¹ R v. Sussex Justices, [1924] 1 KB 256.

² Bihar State Mineral Dev. Corpn. v. Encon Builders (I) Pvt. Ltd, AIR 2003 SC 3688.

³ <https://www.thehindubusinessline.com/news/supreme-court-crisis-all-not-okay-democracy-at-stake-say-four-senior-most-judges/article10028921.ece>

⁴ M Siddiq (D) Thr Lrs v. Mahant Suresh Das, 2019 SCC OnLine SC 62.

⁵ Yashwant Sinha v. CBI, AIR 2019 SC 1802.

seeking to send a clear though condemnable message to the sitting Judges that if they play beside them they will be required and if they detract there will be repercussions.

The government didn't fail to strengthen this argument by recently enforcing the transfer of yet another judge of the Delhi High Court⁶. Justice Murlidhar, a stalwart well acclaimed for his integrity and propriety failed to play along with the Government, when he tempestuously denounced the actions of the executive to curb the consequences of the violence that had erupted in capital over the CAA-NRC. The result of which was the enforcement of his transfer to the Punjab and Haryana High Court overnight, the way this Government likes to play.

It is conceded that Article 80 of the Constitution⁷ empowers the President to nominate the members having special knowledge or practical experience to the house and there is no bar for the Chief Justice against that but it is pertinent that the guardian of the Constitution of the biggest 'Democracy' adhere to its obligations because it is not what he does while on the Bench but also what follows after. It is imperative that Judiciary recognises this need for transparency and fairness in its actions rather than just playing along with the Government. Regard must be borne to the mid-19th century when the Nehru majoritarian had pursued numerous attacks on the Constitution but the Judiciary never feared to be courageous enough to stand and guard this sacred document and with it, its basic features.⁸ Separation of powers albeit not absolute forms the founding stone on which the whole edifice of democracy stands, failing which the although not so famous democracy of ours would stifle to death. It is high time that the Judiciary wins over the long lost trust of its very people who believe that its still not to late to usurp the power so lost. Summarising in today's words, 'Judicial Distancing is the only way which can curb the virus living in the very edifice of the Justice Administration system.'

⁶ <https://timesofindia.indiatimes.com/india/justice-muralidhar-transferred-to-punjab-and-haryana-hc/articleshow/74326551.cms>

⁷ Article 80, The Constitution of India.

⁸ Sixteen Stormy Days, Tripurdaman Singh.