

THE UNASSAILABLE KEYWORDS FOR THE JUDICIARY

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

Justice Arun Mishra's public praise of the Prime Minister at a public forum on Saturday raises serious questions about the independence of the judiciary. What is more disturbing is that he was speaking at the inaugural session of the **International Judicial Conference 2020, 'Judiciary and the Changing World'**. The damage his statement has caused is incalculable. The international judicial community must have been left aghast as far as the very independence of the Indian judiciary is concerned. Judges across India must be left bewildered wondering whether they should indulge in similar praises or not. **One cannot forget that Justice Mishra is one of the seniormost judges** of the Supreme Court of India and every word spoken by him may be taken seriously by those connected with the administration of justice.

The Prime Minister himself applauded the Supreme Court by referring to some recent “critical judgments”, adding that 1.3 billion Indians wholeheartedly accepted the judicial verdicts. The Prime Minister’s claim certainly appears to be off the mark considering that large numbers have questioned these judgments.

The Law Minister, who was also speaking at the inaugural session, himself took the opportunity to attack many of those who criticise the functioning of the judiciary and its judgments. The Executive and the Judiciary appear to be in tandem, something which was clearly not designed under the Constitution. Was the international conference a platform for these?

In a 1981 judgment, the Constitution Bench of the Supreme Court held that “Judges should be stern stuff and tough fire, unbending before power, economic or political, and they must uphold the core principle of the rule of law which says: ‘Be you ever so high, the law is above you.’. This is the principle of independence of the judiciary which is vital for the establishment of real participatory democracy, maintenance of the rule of law as a dynamic concept and delivery of social justice to the vulnerable sections of the community. It is this principle of independence of the judiciary which we must keep in mind while interpreting the relevant provisions of the Constitution.”

In the same judgment another learned judge holds, “...While the administration of justice draws its legal sanction from the Constitution, its credibility rests in the faith of the people. Indispensable to that faith is the independence of the judiciary... the framers of the Constitution took great pains to ensure that an even better and more effective judicial structure was incorporated in the Constitution, one which would meet the highest expectations of judicial independence....”

That structure seems to be crumbling under its own weight.

Later in 1993, another Constitution Bench in the Second Judges Appointment Case, declared: “It is obvious that only those persons should be considered fit for appointment as Judges of the superior judiciary who combine the attributes essential for making an able, independent and fearless judge. Several attributes together combine to constitute such a personality. Legal expertise, ability to handle cases, proper personal conduct and ethical behaviour, firmness and fearlessness are obvious essential attributes of a person suitable for appointment as a superior Judge.”

Among the several attributes that have been prescribed of a judge is “proper personal conduct”.

In a case in 1995, *C. Ravichandran Iyer v. Justice A.M. Bhattacharjee & Ors.*, the Supreme Court went to the extent of holding that for a judge, “the standard of conduct is higher than that expected of layman” and that “therefore the judge can ill-afford to seek shelter from the fallen standard in society”.

It was also declared, “The Judges of higher echelons, therefore, should not be mere men of clay with all the frailties and foibles, human failings and weak character which may be found in those in other walks of life. They should be men of fighting faith with tough fibre not susceptible to any pressure, economic, political or any sort.”

It concluded, “In short, the behaviour of the Judge is the bastion for the people to reap the fruits of the democracy, liberty and justice and the antithesis rocks the bottom of the rule of law.”

Ironically, Justice Mishra himself in a judgment in *R. Muthukrishnan versus The Registrar General Of The High Court Of Judicature At Madras* observes, “Judicial independence is a privilege of and protection for the people.”

He holds, “Francis Bacon has said about the Judges that Judges ought to be more learned than witty, more reverend than plausible, and more advised than confident. Above all things, integrity is their potion and proper virtue. The balancing of values, reverence between the Bar and the Bench is the edifice of the independent judicial system. Time has come to restore the glory and cherish the time-tested enduring ideals and principles.”

He also says, “Independent Bar and Independent Bench form the backbone of the democracy.” So why these remarks about the country’s leader?

So, what can a citizen make out of this completely avoidable public praise by such a senior judge? Have those in positions of responsibility and even others who have publicly praised the Prime Minister in the recent past forgotten the Charter called “The Restatement of Values of Judicial Life”? This was adopted by the full Court, in 1997, to serve as a guide to be observed by the judges which, according to the charter, was “essential for an independent, strong and respected judiciary, indispensable in the impartial administration of justice”. The Charter is “a complete code of the canons of judicial ethics” and categorically declares among many others the following values: “6. A Judge should practise a degree of aloofness consistent with the dignity of his office” and “16. Every Judge must at all times be conscious that he is under the public gaze and there should be no act or omission by him which is unbecoming of the high office he occupies and the public esteem in which the office is held.” To my mind, both stand violated now.

In a Constituent Assembly Debate, Professor K.T. Shah (Bihar) spoke of the dangers lying ahead on May 24, 1949: “In my opinion, Sir, if I may so with all respect, this Constitution concentrates so much power and influence in the hands of the Prime Minister in regard to the appointment of judges, ambassadors, or Governors to such an extent, that there is every danger to apprehend that the Prime Minister may become a Dictator if he chooses to do so. I think there are cases which ought to be removed from the political influence, of party manoeuvres. And here is one case, viz. Judges of the Supreme Court, who I think should be completely outside that influence.”

He again said, “I have been trying to lay before the Houses viz., or keeping the Judiciary completely out of any temptation, and contact with the executive or the legislative side. Whether during his tenure of office... or even on retirement, I would suggest that there should be a constitutional prohibition against his employment in any executive office, so that no temptation should be available to a judge for greater emoluments, or greater prestige which would in any

way affect his independence as a judge."

One thing is clear, the judiciary is fast eroding the hopes and aspirations of great men and women who sat in the Constituent Assembly debating and giving us the great document, the Constitution of India. Any correction, if at all, must come from within the judiciary. Will it? We the Citizens of India can only sit back and watch bemused and deeply disappointed.

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