

A truly independent judiciary cannot be subverted from within or outside

When the Indian Constitution was being written, Constitutional adviser B N Rao met Justice Felix Frankfurter of the US Supreme Court. Justice Frankfurter advised that the Indian Supreme Court always sit 'en banc' (all together). He warned that if the Supreme Court sat in benches, there would be as many supreme courts as there were benches of the court.

That advice was not followed. There has been sharply divided use of the Supreme Court on various questions. Today's press conference with four of the senior judges, including the putative Chief Justice of India Ranjan Gogoi, airing their grievances about the working of the court by Chief Justice Dipak Mishra is the starkest example of a divided Supreme Court.

What the judges have done by coming out is to destroy the cosy illusion that the judiciary is a collegial family of the holies where decisions are given entirely based on law. It is now apparent that personal predilections of judges also sometimes dictate the fate of cases and that men of law, both lawyers and judges, both know that to be true.

The judges have in their letter objected to the CJ using his powers as the Master of the Roster to assign sensitive matters to benches which could be reasonably expected to take a particular kind of view. Examples from the past come to mind. No tenant used to lose before Justice D A Desai. A husband in a divorce case could be expected to have a tough time before Justice Ahmadi. And it was well known that Justice M B Shah would not give death sentences.

So therefore the luck of the roster is clear in the success and dismissal of appeals. But when the Chief Justice of India as the Master of the Roster is accused in writing by four of his seniormost brethren, of using his powers to assign matters to particular benches, then it changes from the luck of the draw to a "fixed" match. The difference between random arbitrariness and deliberate tweaking of the result.

It is time to ensure that the institution is again put back on an even keel, to ensure that there are no outside forces which can dictate the course of events. It is all too easy to dismiss this as a clash of personalities. There are serious issues which have been highlighted by the four judges who have otherwise not been expected to go public.

Appealing to the court of public opinion is a dangerous precedent, not to be easily resorted to. The invitation to public opinion will intrude into judicial working and bring with it the attendant dangers of political polarization into judicial questions.

The issues flagged by the four judges should be resolved within the judicial family itself without resorting to any political or media platform whatsoever. Senior statesmen of the profession including people like Fali Nariman and Chief Justice MN Venkatachaliah must be resorted to for their wise counsel.

Over and above everything else there must be concentrated effort to assure the nation that a truly independent judiciary can exist which cannot be subverted from without or within.

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