

Should the four SC judges have dissented publicly?

Supreme Court Judges (L-R) Kurien Joseph, Chelameswar, Ranjan Gogoi and Madan B Lokur addressing the Media in New Delhi on Friday. | Photo Credit: [R.V. Moorthy](#)

An unprecedented event took place on January 12 when the four senior-most judges of the Supreme Court, after the Chief Justice of India (CJI), held a press conference, issued a statement, and also answered questions from the media. Justice J. Chelameswar, at whose residence the press conference was held, said that the judges were “left with no choice” other than to communicate to the nation the many “less than desirable things” that have happened “in the last few months”.

They said in their statement that “certain judicial orders passed by this court” have “adversely affected the overall functioning of the justice delivery system.” Justice Chelameswar said that all four of them are “convinced that unless this institution is preserved and it maintains its equanimity, democracy will not survive in this country.”

Last resort

The four judges have an impeccable record of integrity, erudition, and impartiality. They felt that it was necessary to inform the nation about the lack of impartiality by the CJI in the process of administration of justice. They further said that they did not want the country 20 years from now to think that they had “sold their souls”.

From a plain reading of their statement and their replies to questions at the press conference, it is clear that they issued the statement as a last resort, with deep anguish, in order to save democracy and the Supreme Court. They had no option but to address the nation and inform its citizens about the lack of impartiality, which is the bedrock of administration of justice.

The four judges were absolutely right in informing the public of the dangers that lie ahead. Democracy is enshrined in the Constitution. It is their duty as Supreme Court judges to protect the Constitution. If there is no democracy, there is no Constitution and no constitutional democracy.

It is not as if the four judges did not try for months to convince the CJI that he must not resort to selectivity in the assignment of cases, but it bore no results. Even on the day of the press conference, they met the CJI (in regard to the listing of cases) but could not convince him. Unless this lack of impartiality in the administration of justice is enquired into, and unless rules are framed on a rational basis and a system is devised for an impartial allocation of cases, the damaged faith of the people of India in the impartiality of the Supreme Court will not be fully restored.

Role of the Attorney General

It was expected of the Attorney General of India as a constitutional authority to squarely confront the serious issues raised by the four judges and ensure that the faith of the people in the independence and impartiality of judges is restored. Needless to say, that independence and impartiality form the basic structure of the Constitution.

The Attorney General has unfortunately failed to deal with the vital issues raised. He has instead tried to hide these issues under the carpet and declare that everything is settled and hunky-dory. He has failed the Constitution. It appears now that he has taken a complete about-turn as he has

declared that the controversy is not yet settled.

This is an opportunity for the Attorney General to save the Constitution. He should not act as an agent of the government, but as a constitutional authority. Equally, it is his constitutional duty to squarely attend to the vital issues raised by the four judges in discussion with the CJI and all other judges of the Supreme Court to find a solution that will restore the dignity of the Supreme Court.

B.A. Desai is a senior advocate and former additional solicitor general of India

A strong and united judiciary is the sine qua non for a strong and vibrant democracy. If the judiciary of a country is divided and polarised, it will have a direct effect on the very survival of democracy in that country.

Have internal discussions

What happened on January 12, when four senior judges of the Supreme Court addressed a press conference, is something which could and should have been avoided. When any judge has a difference of opinion on any professional matter with his brother colleagues, the best way to iron out these differences is to have an amicable discussion on the same. If this is not possible, then a discussion must be held with the help of other judges. However, it is not proper to go public and talk about these differences, whatever they may be. The stability of a nation depends on two factors: the common man's absolute faith in the currency of the nation and in the judiciary. In a democracy, the judiciary is one of the most important pillars and it is the last ray of hope for the common man. He pays utmost respect to the judiciary. If his faith in the judiciary is hampered in any manner, the result is a huge loss to the country and to the judiciary.

Judicial discipline also requires maintaining a certain decorum because under the Contempt of Courts Act, truth is not a valid defence. The legislature has made this rule to ensure that the common man's interests are protected, even if there is a ring of truth in the allegations. That is why I am of the opinion that whatever the differences amongst themselves, they should have been sorted out in the chamber itself.

Either the judges should have called for a full-court meeting where they could have discussed the issue and found a solution or they could have sought the intervention of the President to resolve the issues. Appointments of judges are issued in his name. He could have acted as an umpire and the matter would have been confidential. Informing and seeking the intervention of the President would also have ensured that there was no interference in the judiciary.

Today, we are seeing how political parties are settling scores, by accusing each other of interference in the highest judiciary. They are scoring brownie points based on that press conference, which is really unfortunate. The manner in which the media asked questions during that press conference was also unfortunate. I don't blame the media. Ultimately, the judges are looked at as gods by the common man. That faith of the common man has now taken a knock. I do not want to comment on the charges levelled as that is a separate matter.

Should not set a precedent

What I also fear is that the subordinate judiciary might take this as a cue to air their differences. After all, they too can do the same. The High Courts, the lower courts and various judges could all come out and publicly speak against their chief justices. There would be anarchy if that were to happen.

The judges said they had come to the court of the public, but the public court has no jurisdiction. Ultimately, they have to sort out the problem between themselves.

This should not set a precedent. Corrective measures need to be taken by the judiciary itself in order to set things in order.

As told to Anuradha Raman

Ujjwal Nikam is a public prosecutor

Sitting judges seldom, if ever, speak to the media. The process of adjudication demands that the judge concentrate solely on the record before him. Courts speak only through their judgments and decrees, not oral statements. Judges do not speak to explain their judgments, except through other judgments.

However, it is more than judicial reason that keeps judges from resorting to the media. Judges are very careful to stay out of political partisanship of any kind whatsoever. Justice Ruth Bader Ginsburg of the U.S. Supreme Court scoffed at the idea of a Trump presidency. She later had to withdraw her words and agree that speaking to the press on politics was not a good idea. On May 7, 1997, the Supreme Court of India adopted a charter called the Restatement of Values of Judicial Life. This was to serve as a guide to be observed by judges and was considered essential for an independent, strong and respected judiciary. The charter advises judges to be “aloof”, and “not enter public debate” or “give interviews to the media”. Having said all this, it must be acknowledged that judges are the best arbiters of when rules require to be ignored, if not broken. Justice Dalveer Bhandari of the International Court of Justice gave media interviews on the Kulbhushan Jadhav case even as the matter is still pending.

Festering problems

Four senior-most judges of the Supreme Court, including the putative successor CJI, called a press conference to put on record their misgivings about the functioning of the court and the allocation of judicial work by the CJI. Their concerns must be considered in full measure. Their grievance was not simply about them being left out or being given non-substantial work. Their complaint was of work being selectively allocated to achieve a result which was to the government’s liking. The judges placed on record a letter written by all four of them over two months prior to the press conference. It is apparent that pressure had been building up for two months, if not more. Considering that Chief Justice Dipak Misra assumed office on August 28, 2017, the fact that four senior judges felt compelled to caution him three months into his tenure is itself indicative of the fact that the collegial ways of administering the highest court had broken down.

Public debate on conduct

The judges have left the matter to the court of public opinion. They say that they were compelled to speak lest they were blamed 20 years from now for having “sold their souls”. Events have not fully unfolded. The four judges and their press conference have been the subject matter of much media criticism. Unwarranted aspersions have been cast in television debates and social media on the motives of the judges. The press conference has had the effect of bringing into public debate the conduct of various judges, a course of action which the Constitution-makers wanted to avoid. Article 121 prohibits the legislature from discussing the official conduct of any judge of a constitutional court, except while debating an impeachment motion.

The judgment of history may or may not be written 20 years from now. For the moment, it is quite clear that there are no clear answers to the question of whether the four judges ought to have resorted to a press conference. The full facts are not out in the public domain, and may never be. The judges would be justified if their perception was of a clear and present danger to the Republic and to the independence of the judiciary.

Sanjay Hegde is a senior advocate in the Supreme Court

Marriage is a civil contract — adultery or divorce should have only civil consequences

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