The mandates of natural justice

It was on November 26, 68 years ago, that the chairperson of the Constitution drafting committee, B.R. Ambedkar, put to vote the following motion at the Constituent Assembly: “That the Constitution as settled by the Assembly be passed.” The motion, as the minutes of the day’s meeting recorded, was adopted amidst “prolonged cheers.” In the ensuing decades, though, the day was scarcely recognised as forming an occasion of any particular note. But, in 1969, the Supreme Court Bar Association declared November 26 as Law Day, “a red-letter day,” in the words of the association’s then president, L.M. Singhvi, which the government has now designated as Constitution Day. But call the day what we might, Singhvi’s intention in declaring it as an occasion for annual observance is certainly worthy of paying heed to.

“Our purpose in designating 26th November as Law Day,” said Singhvi, in his inaugural address, “is to emphasise the role and importance of law in the life of our Republic, to review the state of law and administration of justice, to suggest ways and means of improving our laws and our legal and judicial system, to establish better and more meaningful equations between the Bench and the Bar, to strengthen the principle of the independence of the judiciary… and to maintain, reinforce and augment public confidence in our legal and judicial system.”

A necessary appraisal

Were we to today conduct an introspection of the kind that Singhvi thought necessary, what might our appraisal be? This question attains particular salience given recent events in the Supreme Court, which have not only sounded a national alarm, but have also threatened the confidence that the public might repose in the judiciary. The court’s collective actions, in undermining every notion of good ethical conduct, has struck a potentially irredeemable blow at the principles highlighted by Singhvi in his speech, each of which goes to the root of the constitutional morality that Ambedkar held so dear.

The firestorm in this case was triggered by a first information report in which a retired Orissa High Court judge, I.M. Quddusi, was implicated for allegedly taking bribes to secure favourable orders from the Supreme Court. As it happened, these matters which Justice Quddusi is alleged to have claimed he could fix were heard by a bench presided by the Chief Justice of India (CJI). These claims supposedly made by Justice Quddusi might well be humbug. But how are we to know their veracity unless a reasonable investigation is conducted? This precisely was the question that a pair of petitions filed respectively by the Campaign for Judicial Accountability and Reforms (CJAR) and the advocate Kamini Jaiswal raised. Given that any involvement of the Central Bureau of Investigation could impinge the autonomy of the judiciary, the petitions suggested that the court might consider appointing a special investigation team to conduct an inquiry into the FIR, under the supervision of a retired CJI, independent of all executive interference.

When the original petition was filed by the CJAR, it might have been reasonable to expect the CJI to recuse himself altogether from the matter, including from any involvement as the master of the roster, as the person responsible for both determining which judges hear a case and when they do so. But his failure to do so prompted the filing of a second petition, this time by Ms. Jaiswal. With a view to avoiding any intervention by the CJI, this case was separately mentioned before a bench presided by the court’s second most senior judge, Justice J. Chelameswar, who ordered that the petition be heard by a bench comprising the five most senior judges of the court. This, however, led to a series of other consequences, with the controversy spiralling into successive episodes of unseemliness, each apparently more damaging than the previous. Ultimately, the CJI not only set aside Justice Chelameswar’s order, by constituting a five-judge bench of his own, over which he himself presided, but he also thereby reaffirmed his power and authority to make administrative

choices.

Justice seen to be done?

If we were to view the controversy rationally, the entire issue ought to boil down to these questions: under what circumstances does a litigant's claim in court translate into a claim that interests a judge? Does the CJI ever have a duty to recuse himself as the "master of the roster"? To determine these questions, the court has no explicitly binding rules to apply; it's guided partly by precedent, but mostly by discretion. In ordinary circumstances, this discretion would be governed by the general principle expressed by Lord Chief Justice Hewart of the King's Bench nearly 100 years ago: that "justice should not only be done, but should manifestly and undoubtedly be seen to be done."

But, on November 14, when a three-judge bench constituted by the CJI, which included a judge who had originally heard the cases that Justice Quddusi claimed he could influence, conducted a hearing, it barely considered the basic tenets of this principle. Instead, it dismissed Ms. Jaiswal's petition, as an attempt at "bringing disrepute" to the court. What's more, the bench also held that the petitioner's request for a recusal by one of the judges hearing the case amounted virtually to a contempt of the court.

The Gajendragadkar way

Here, it may have been instructive for the court to hark back to an incident from August 1964, when a group of intervenors represented by the lawyer Purushottam Trikamdas — a 'tiger' at the bar, by Fali Nariman's reckoning — made what was at the time an odd request to a bench presided by the CJI, P.B. Gajendragadkar, which was hearing a case concerning the validity of a Bombay land acquisition law. Gajendragadkar, they argued, should not hear the case, since its outcome would affect a cooperative housing society of which he was a member.

As Mr. Nariman recounted in his memoir, "Before Memory Fades," Gajendragadkar eventually agreed to recuse himself from the case, but he nonetheless expressed an intention to hear a similar dispute that emanated from Madras, where he himself had no personal interest. It was then that the Attorney General, C.K. Daphtary, who was appearing for the Union of India, stood up to point out to the judge that it wouldn't be ethical for him to hear either of the cases, given that any decision in the Madras case would have likely bound the court later when it heard the challenge to the Bombay law.

The next day the bench was promptly reconstituted, with Justice K. Subba Rao presiding. As Mr. Nariman pointed out, there could be little doubt, not then, and not today, and certainly never in Daphtary's mind, that had Gajendragadkar heard the cases, Dapthary's client, the government, would have succeeded. But, as it happened, the two cases — *N.B. Jeejeebhoy v. Assistant Collector* and *Vajravelu Mudaliar v. Special Deputy Collector* — were both decided against the state. In H.M. Seervai's words, the Chief Justice, in recusing himself, had thus "affirmed in India the principle, well settled in England, that the requirements of natural justice apply to the most exalted judicial officer as they do the humblest."

Now, Gajendragadkar's recusal still leaves certain questions unanswered. In particular, it doesn't tell us much about the CJI's role as the master of the roster. But, were we to place the Chief Justice's position as an administrative head above ordinary mandates of natural justice, we would be violating the basic constitutional morality that holds together the entire structure of our Constitution, the idea that we are a country governed by the rule of law.

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