

Has Mr. Kharge Brought Down the Value of Dissent?

Posted on February 03, 2019

The leader of the largest party in Opposition in the Lok Sabha Shri Mallikarjun Kharge dissented once again in the appointment of the new CBI Director. Shri Kharge dissents regularly. He dissented when Shri Alok Verma was appointed, dissented when Shri Alok Verma was transferred and has now dissented when Shri R. K. Shukla has been appointed. The only thing constant in the High Powered Committee comprising of the Prime Minister, the Chief Justice of India and the Leader of the Opposition which deals with the CBI Director's appointment and transfer, is the Kharge dissent. Appointment of the CBI Director was a sole prerogative of the Government. The Government, i.e., the Council of Ministers is accountable to the House of the People. Appointments are made by the Cabinet either directly or by the ACC. It was felt that since investigation is an independent function, India's primary investigating agency the CBI must maintain an arm's-length distance from the Government. Hence the alternative opinion was voiced that the appointment should not be made by the Government alone but by a Collegium. The first institution to flag this concern was the judiciary. At the time of the drafting of the Lok Pal Law, the present Collegium was conceived. Since the Congress, in 2014, was not a recognized opposition falling below 10% of the seats in the last General Elections, the Government, maintaining the highest standards of fairness brought in an amendment wherein in the absence of a Leader of Opposition, the leader of the largest party in the Opposition was made a part of the appointment Collegium.

When the Leader of Opposition sits as a Member of the Collegium, he sheds off the political colour of his office as much as the Prime Minister and the Chief Justice of India shall both leave the authority of their respective domains and work exclusively towards appointing or transferring the Director on the criterion of merit or fairness. The position of Shri Kharge as the Leader of Opposition in the Lok Sabha, entitles him to sit in the Committee but the political colour of that office has to be left outside. Shri Kharge then is a part of a Collegium, which discharges a governance function. Unfortunately, that does not seem to have happened.

Dissents are a powerful instrument in democracy. They are more commonly prevalent in judicial pronouncements. Dissents are also a part of the parliamentary system particularly in the Legislative Committees. The dissenter places an alternative view point. Where Monetary policy Committees exist, dissents are occasionally given by Members. Dissent in appointment Collegium are rare but not unknown. I concede to Shri Kharge the right to dissent. The dissenter is an assertor. He values his views. He represents an alternative view point. A dissenter challenges the majority. He does it on the basis of a call of conscience dictated by his fair mind. He puts his dissent on record so that it can be of value to the wisdom of the future generations. A dissent should never be a political tool. The right to dissent is sacrosanct and has to be sparingly used. If a dissenter dissents on every conceivable occasion he comes out as a person either motivated by collateral reasons or as a person lacking objectivity.

There is a difference between the dissents as a part of a judicial body and dissents in ordinary matters of administrative appointments. The first may involve sacrosanct principles and the latter involves a preference or a dislike for a particular individual. When Lord Atkins dissented in 1942 in the Habeas Corpus in England case during the Second World War or when Justice H. R. Khanna in the Habeas Corpus case during the Emergency in 1976 and more recently when Justice Indu Malhotra dissented in the Sabarimala case, these were powerful dissents of a strong opinion. The dissenters believed that the dissent may help future generations in correcting what the dissenting Judges felt was an erroneous view of the majority. However in an administrative matter of appointment or transfer, if Shri Kharge dissents on every conceivable opportunity, namely on the appointment of Alok Verma, transfer of Alok Verma and the appointment of R. K. Shukla in relation to the CBI Directorship it clearly established a pattern of his frame of mind. He uses the weapon of dissent excessively and not objectively. Using the instrument of dissent recklessly neutralizes its value. Dissents frequently used in administrative bodies like Collegiums compels independent observers not to take the dissent too seriously. The perpetual dissenter in a Collegium meant for appointments sends a message that he was included as a Member because of his capacity of Leader of the Opposition but he hasn't been able to shed his role as an Opposition Member, even though now he is a part of a Government Committee. His dissent has diminished its value and credibility.

Mr. Kharge's dissent in the matter of the transfer of Alok Verma was coloured by his political views. He was a petitioner in the Supreme Court himself in support of Alok Verma. He should have recused himself from the Committee since his views were known. He suffered from a bias and conflict of interest. Yet he did not recuse himself. The only task before the Committee was whether the CVC report contains the adequate material for transfer of the Director or not. He wanted the Committee to either ignore the CVC report or sit in appeal against the finding of the CVC – something which was beyond the jurisdiction of the Committee.

Shri Kharge has dissented a bit too frequently. Many may wonder if Collegium's are workable. The appointment of a CBI Director was never envisaged to be a political battle. Shri Kharge has made it look like one.