

It's Time to Stand up With the Judiciary

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The pivotal position of the Chief Justice of India

The incident of a junior ex-lady employee of the Supreme Court making harassment charges against the Chief Justice of India has acquired a disproportionate magnitude. Such complaints, when they are made in the ordinary course of any administrative functioning, are referred to the appropriate Committee. However, when the complainant distributes copies of her representation to other Judges of the Supreme Court and the media in order to sensationalise her allegations, it ceases to be routine. When four digital media organisations with an unparalleled track record of 'institutional disruption' send similar questionnaires to the Chief Justice of India, there is obviously something more than what meets the eye.

India has always taken pride in its independent judiciary. Judges decide cases which deal with life of the common man as also the most powerful commercial and political interests. A judge is not in a popularity race. He owes his commitment only to law, Justice and fairness. A Judge is neither to follow the ballot box nor is he to be swayed by the times. His judgement pleases us at times and leaves us unhappy on many occasions. But that is the reality of the system which we have learned to live with. The Chief Justice of India is the first amongst the equals in the Supreme Court. He is the head of the judicial institutions. He is both the 'Master of the Roster' and the 'Head of the Collegium' which makes binding recommendations for the appointment of judges. His integrity, ethics, scholarship and fairness reflect the image of India's judiciary. He lives by example. For both the Chief Justice and the judicial institutions, credibility and respect are essential. Once the 'Iqbal' of judiciary is destroyed, the institution itself will crumble.

The assault on the institution

It was in the decade of 1970s that we witnessed supersession of judges, intimidation of courts and transfer of High Court Judges. This was coupled with appointment of politically and ideologically inclined judges in courts. Post the 1982 judgement in the first judges case, the appointment of politically affiliated judges continued in several High Courts. This process substantially stopped after the 1993 judgement in the second judges case.

The last few years have witnessed the consolidation of 'institution destabilizers' in a major way. Many of these destabilizers represent Left or ultra-Left views. They have no electoral base or popular support. However, they still have a disproportionate presence in the media and the academia. When ousted for mainstream media, they have taken refuge in the digital and social media. They continue to believe in the old Marxian philosophy of 'wrecking the system from within.' They use free speech to destroy the judicial institution.

This section has found a convenient ally in a small but vocal section of the Bar. This section exploits the judicial refrain of excessively using the power of contempt. However, they themselves have no hesitation in contemptuous behaviour themselves. They go public against individual judges, including the Chief Justice, when they fail to get a favourable order. They carry on social media campaigns against judges who write judgements adverse

to them. They have little regard for truth but masquerade as protectors of public interest. Their behaviour in courts is offensive both to the Bench and their opponents. They threaten walkouts if judges are in disagreement.

Even though most of them subscribe to fringe ideologies and ideas, it is regrettable that a section of the Members of the Bar affiliated to the Congress Party tend to join them. Frequent attempts are made to get some Parliamentarians to sign Motion of Impeachment against judges and even the Chief Justice on unsustainable grounds. What has always puzzled me is the Congress lending support to such fringe campaigns.

The power of contempt

The power of contempt is intended to protect the dignity of the Court. However, the power of contempt is rarely and sparingly used. Ordinarily, courts tend to ignore contemptuous criticism. Courts are willing to accept a criticism of judgements because that aids the process of legal evolution. The liberal attitude of the Courts has emboldened the ‘institution disruptors.’ At the end of the day, they get away because of the magnanimity and the compassion of judges.

Independent judiciary and free media are both essential for a vibrant democracy. Both have to live with each other. In order to co-exist, both must respect the respective rights of each of these institutions. One cannot take upon itself the task of destroying the other. Ever since 1950, every judgement of the Supreme Court relating to Article 19(1)(a) has favoured the strengthening of free speech. The reverse is not true. Mainstream print media conventionally had greater editorial control. The ability to dissect facts and take a balanced view was much higher. But of late, the rat race for grabbing eyeballs or viewership has begun. For the ‘institutional disruptors’ there are no red lines.

The history of the last several year shows that cases after cases have witnessed facts being manufactured and twisted. This falsehood found support in a section in the media. Upon deeper analysis most of them were found to be factually incorrect. Facts were manufactured. The same ‘gang’ was behind this campaign.

The present case

A Judge is continuously judged every day by the Bar and the stakeholders in the course of his personal and judicial conduct. Every time he makes a comment or writes a judgement, every word is scrutinised. In terms of personal decency, values, ethics and integrity, the present Chief Justice of India is extremely well regarded. Even when critics disagree with his judicial view, his value system has never been questioned. Lending shoulder to completely unverified allegations coming from a disgruntled person with a not-so-glorious track record is aiding the process of destabilisation of the institution of the Chief Justice of India.

India has witnessed a series of attacks by the ‘institution disruptors’ against judges who are unwilling to agree with them. It may not be an exaggeration to say that today both in Court and by creating an environment outside, a mass-intimidation of Judges is on. Some lawyers have used intimidatory behaviour as a tactic to expand their practise. Intimidation and

discrediting are important weapons in the hands of these people. Reputation is an integral part of a person's fundamental right to live with dignity. An intimidated judge can fear consequences of a possible view that he is taking. It is, therefore, essential that all well-meaning persons stand with the judicial institution when destabilizers get ready for an assault.

Since the case relating to this is pending in judicial side before the Bench of a Court, we should leave it to the wisdom of the Court as to how they intend to deal with it. But let it be remembered that this is not the first case of the 'institutional destabilizers' nor will it be the last. If those who peddle falsehood to destroy the institution are not dealt with in an exemplary manner, this trend will only accelerate