



The discussions that have followed the press conference by the four judges of the Supreme Court, as well as certain directives to the lower judiciary regarding the manner of maintenance of the case information system, have brought into sharp focus the fact that they too - the judges - must be held accountable and that they too - the judges, can be victims of systemic deficiencies.

It is not uncommon to hear whispers about the judiciary, be it the lower judiciary or the High Court or Supreme Court judiciary. And clearly the recent press conference of the four senior Supreme Court judges, notwithstanding the merits or otherwise of the same, has resulted in bringing these whispers out of the closet.

It is not as if these issues have not been raised earlier, and by no less than retired Chief Justices of the Supreme Court. In respect of accountability, late Chief Justice J. S. Verma, said it very beautifully, "These days we (Judges) are telling everyone what they should do but who is to tell us? We have (the) task of enforcing the rule of law, but (that) does not exempt and even exonerate us from following it". As for systemic deficiencies, I quote retired Chief Justice M. N. Venkatachalaiah, "Our system of assessing the competing priorities of cases is not fully developed. I admit there is some adhocism in it. We don't have any rules or regulations for assessing competing priorities. That needs to be done as a policy of court management. Each bench decides its priorities according to its own discretion." But it seems that in India, such articulations, by even Chief Justices, are little heard in the corridors of power, unless something more seemingly dramatic such as a press conference by four Supreme Court Judges, takes place.

At another level, we also know very well that the judiciary is the last resort for a citizen in a country currently beset with increasing fascism, crippling of human rights institutions and autocratic governance. We therefore cannot afford to lose faith in the judiciary in these critical times. It is, therefore, our responsibility to ensure that unfounded statements are not made by all and sundry about the judiciary while, at the same time, there being a level of accountability by the judiciary that would in fact ensure a resilient faith in the judiciary as a

Hardly anyone, incidentally, is talking about accountability of judges for sexist remarks. I remember a day many monsoons ago, the first day of my colleague as a lawyer in the Trial Court. I was shocked to be told by a Judge in the open Court that “Women should be beaten in the morning, in the afternoon and at night” and this also to the glee of many in a bar composed mostly of male lawyers, as was the case during my initial years of practice.

Mercifully that judge was shown the door not long afterwards, as his erratic behavior became a byword in his judicial practice.

At the end of the day, we cannot pretend that the judiciary is all above board and surely there must be accountability. At this point for the highest judiciary, the only step available is impeachment. But it also must be remembered that to hold someone accountable, there have to be some rules in place. If there are no rules or policies, there is no derogation of rules or policies. How then does one hold someone accountable? There is undoubtedly going to be an element of discretion, but that discretion has to be fettered by rules and reasonableness, be it in terms of allocation of cases, or in terms of prioritization of cases, or with respect to many other related matters.

These policies must also be in place for the lower judiciary. Otherwise some cases are pending in courts for years, while other cases get disposed of expeditiously. At present, at the level of the trial court, there are certain kinds of cases that are time bound, such as cheque bounce cases, cases of domestic violence, cases of under-trials in custody. Sometimes, though not always, it is a Hobson’s choice for the trial court judge to determine the priorities of cases to be taken up effectively at this level. Here, the issue of systemic deficiencies also comes into play. The judges are also human in terms of how much they can handle in a day. A system that saddles them with 50-60 cases in each session of the day, and a case information management system that obligates them to fill in attendance at each round of case calls, seems to be actually a part of the recipe for a decline.

Talking of one of the significant issues that the four judge press conference raised, namely, allocation of cases, at the lower judiciary level, there is an air of regret about domestic

violence cases and child custody applications being allocated to them, because under the point system now followed, the points allotted for disposal of a domestic violence case or an application for custody of children, are not commensurate with the quantum of work that a judge has to put into these cases.

And why blame the judges for being career-oriented and competitive in a world which anyways does not respect a model of cooperation, and which will leave them behind, irrespective of their merit, because of the number of such 'low-point cases' allocated to them? This improper point system can in fact put female judges at a disadvantage because the domestic violence cases are, partly by the law and partly by a directive, required to be handled only by female judges. Therefore the issue of allocation of cases has many dimensions and implications even for the lower level judiciary.

Finally, access to justice is the foundation stone for fair play. If people cannot access courts because of the numerous days that they have to spare for court cases, given their being engaged in daily-waged labour, or because they run a risk of losing their jobs with so many days' leave for the cases that are constantly postponed, then these are sad statements in the annals of justice.

While the sensationalism associated with the press conference of the four Supreme Court judges grabbed media headlines, the everyday systemic enablement of denial or subversion of justice is a bigger problem that the community of lawyers and judges need to ponder upon seriously.

(An edited version first appeared on *O Heraldo*, dt: 25 January, 2018)



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