

Diminishing dignity of Judicial System

The judicial system is under attack at present. It is fighting for its survival & dignity. It is in a crippling position now a days. Although it is a fact that in earlier times, Judge, Judicial orders & system faced several contemptuous & defiling attempts from Government itself or by its officers, prominent institutions and personalities. But in democratic setup such kinds of improper actions are rare & exceptional and defaulter has been punished legally by court and Government and morally by society. The position is drastically different in other Governmental systems, other than democracy. Martial law dictator General Ja-ul-Haqus of Pakistan compelled Justice Dorab Patel to award sentence of death to former Prime-Minister Mr. Bhatti in a murder trial. Recently Sarjaha court found guilty one Keralite Indian VAsudevan Pillai, who is head of Drama department in Kalikot University in his absence arbitrarily. Maltreatment to Indians and disobedience to court's order in Fize by its Military Government shows disregard to Judicial system. There might be several other examples in various other countries where democracy is not the form of Government. The position is balanced in democratic Government, where all the hurdles from the path of justice have been removed and Supremacy of Rule of law has been propounded & well established.

Justice V.R. Krishna Iyer (A.I.R. 1980 S.C. 1730) observed that if the orders of supreme court are not respected but ignored, then certainly judicial discipline and ediquatte are put into peril. It vehemently put to end justice. U.N.O. passed a resolution in December 1985 and framed 20 Basic principles to maintain judicial dignity. These principles have ruled to protect judicial system, Judges, to enforce judicial orders, to maintain judicial dignity and to check any kind of misuse. It has also ruled to keep judicial working aloof from political and executive interferences and to assure full tenure of service. The real purpose behind all is to maintain judicial independence. The seeds of judicial independence may be traced from the times of Chief Justice Coke in year 1610 in England itself, when his services were sacrificed (dismissed) to execute and interpret basic natural and judicial canons into judicial orders. It undoubtedly insulted judicial system but on the other hand showed the missile of judicial independence. In England no other important instance may be quoted. In 19th & 20th century, the democracy had, in world, gradually but deeply rooted in governmental system keeping total disappearance to these insulting attitude to judiciary except on very rare & exceptional occasion.

The position of India is on different footing since 1968 apparently when the Government felt offended and annoyed on the finding of Golak Nath V/s State of Punjab, Government Amended the constitution itself to supersede the effect of this case law. The Supreme court itself, after few years, over ruled it and also declared the constitutional amendment partly invalid. The verdicts of Bank Nationalization and privy purses cases had been completely overlooked by government through promulgation of fresh statutory law. Although keeping pace with society, these judgements are today absolute, irrelevant because individual gain is highly unsatisfactory and useless in comparison to the gain for society at large. If government could have awaited for any other judicial or otherwise remedy other than constitutional amendment, then certainly position could not have gone worst and social justice could have been enforced.

The serious situation arose in 1976 when the then Prime Minister Mrs. Indira Gandhi subverted the constitutional provision that the election of Prime Minister and President can not be challenged in the court. She did it with full knowledge that her election has been declared to be null & void by Allahabad High court and appeal against it by her is pending before Supreme court. The Supreme court declared this constitutional amendment as invalid and unconstitutional. It showed to the society and large that the then Government did not want to pay respect to judicial orders. It wanted to work arbitrarily, which is not possible in the regime of Rule of law. If the then Government could have acted with patience and waited for the decision of appeal in Supreme court, which declared the election of prime minister valid and legal, then his active insult to judiciary could have been avoided. Further politicians and prime minister could have saved themselves from indictment. The verdict of Supreme court in graveyard dispute between Shias & Sunnis at Varanasi has yet not been executed by Government. On the other hand, Government and its officers showed their inability to execute this order before Supreme court and court was virtually compelled in year 1983 to stay the operation of its own verdict for the first time in the judicial history. The court stayed the operation of the order for 10 yrs. i.e. upto 1993. Let us see whether this execution of order of court directed the demolition of one part of a mosque in Razapur Bazar which was illegally constructed. Now it is a surprising fact that the West Bengal Government failed to execute this order. On the other hand that illegally constructed portion of the mosque was ordered to be regularised keeping in view the respect to public sentiments, but absolutely against the order of high court. Of demolition of illegally constructed portion of the mosque by court. Swami Agnivesh raised the vital

problematic issue of Bonded Labour System prevalent in Haryana. He took the shelter of court for the protection of these Bonded labourers. Court ordered for the protection of these labourers and thorough investigation in this issue, the court's order have not been complied with so far but just against it Swami Agnivesh was sent to Jail in a criminal case just to harass him. That criminal case was let on, to be absolutely false and concocted by police itself in which Swamiji was put behind the Bars. Still the position in the same those orders have not been complied so far.

Sex exploitation of woman's in Nari Niketan Agra in U.P. and compulsory free service from Bonded labourers in Ajmer Rajasthan had figured in writ petition before Supreme court, but the orders of court had not been complied so far. The various dictums of Supreme court in Hussainara Khatun cases in Bihar had pointed out the plight of prisoners in Jail. It is a sad fact that Bihar still today, prisoners are kept in jail without any lawful authority contrary to this decisions of Supreme court. Several petitions of prisoners in Bihar to various courts still can show this sickness. The Supreme court punished the Director General of Andhra Pradesh police, who failed to comply with the order of the court in 1984-85. To produce in court one person, who was said to be in police custody and alleged killed in fake police encounter.

The Supreme court has directed the Tannery owners in Kanpur to put heavy check on the pollution of water of holy river Ganga. but in the last three years these orders have not been complied with so far. Finally the court in March 1992 rigorously ordered to comply with orders of court or close down the Tanneries. But the position is still not good. Let us see whether these are complied with or not, if complied with then, when.

The Brutal harassment of chief Judicial magistrate in 1990 in Nadia (Gujrat) by police personnel and subsequently his arrest, is highly derogatory fact. Although defaulter police personnels have been duly punished but it is alone one not sufficient. Now it is the demand of time that proper steps, to maintain and protect judicial dignity, should be adopted.

When High court or subordinate courts issue warrant of arrest against any officer, politician or respected person, then, it often happens that such warrants of arrest are not executed. Look at the speaker of Manipal assembly speaker, he has violated all democratic norms by disobeying order of apex court in spite of repeated calls by court itself He has adopted a path of confrontation by initiating the breach of privileges motion before the legislative committee against all five judges of Supreme court who are conducting hearing against the speaker in Supreme court.

One warrant of arrest from Kerla High court is pending for execution since last four years against Sahi imam Abdulla Bukhair of Delhi. Several heinous offences have been registered against Kisan leader Mahendra Singh Tiketh but judicial proceedings could not have been initiated so far against him. T.N. assembly speaker secured his warrant of arrest executed against the editor of illustrated weekly inspite of the stay of arrest from Supreme Court directly. Central Government, itself, failed to respect and enforce, so far, the award of Supreme Court in Kaveri Water dispute between Karnataka & Tamil Nadu and there is no possibility of its enforcement in near future. The declaration of Central Government for the re-construction of alleged mosque without the prior permission of court and central government's stand of non enforcement of judgments of Supreme court. In Job reservation case recently with regard to promotion are highly disregardful to judiciary. One argument has been advanced by particular groups now that with regard to religions matter, the religions body headed by priests supreme. It's decision is final and can super sede the orders of court and no court of law, what soever, highest in rank may be, can decide that issue. It shows complete disregard to judiciary.

This trend obtained solid footings when our central government obliged and appeared few religious groups even by superseding the verdict of Supreme court through a fresh enactment according to their wishes. The supersedtion of decision of Supreme court in Aligarh Muslim Univesity case and Shah Bano's case are apt examples.

Now the position is that respect to judiciary and judicial order is highly uncommon fact rather disobedience, non compliance and contempt which occur regularly in day to day life. The position is very complexive in case where government officers, politicians and persons of higher status are involved. It is often seen that compliance of judicial orders is being stopped or postponed on technical and flimsy grounds directly and indirectly. The simple purpose behind it is i.e. year not to comply with or to delay it's execution. To defeat the real purpose of justice to the aggrieved party and to maintain the arbitrary wishes of the elite class.

Now the problem is two fold ; - Firstly that judiciary should take all possible steps to gain the confidence of public and to show to the society at large that justice is being dispensed to society without any unreasonable delay. The contemnor of judicial order (The guilty of non compliance) must be severely punished by the court, whose judicial order has been disobeyed strictly and compulsorily without any delay on summary trial basic.

Secondly, legislatures and executive should not enact substandard & poor laws, rules etc. they should also think over their limitations to avoid any conflict and dispute. Government alongwith other things, should made it clear by law or otherwise that compliance of court's order is obligatory and compulsory to all including its officers and itself and incase of disobedience severs punishment must be awarded by Government it self compulsorily.

Only severe punishment to guilty of non-compliance of court's order is the demand of time. Unconditional Apology or future warning as a form of punishment should either be abjured or abolished because now, it does not show any kind of fear or sanction of punishment at all. It should also be borne in mine that punishment should be awarded as earlier as possible when the non compliance comes to the notice of court A public awareness movement should be started all over the Nation, To maintain judiciary dignity and respect. Hence if we want to maintain the judicial system and it's respect. Then certainly some solid steps must be taken otherwise it shall collapse causing heavy damage to democracy and hemocratic norms.

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