

CRISIS IN SUPREME COURT:
IS IT TIME FOR JUDICIAL TRANSPARENCY?
BY- DEVAANG SAVLA

In an unprecedented and extraordinary move by four Senior Judges of the Supreme Court, performing their claimed soul-felt duty and responding to their debt towards the nation which has not only taken the legal fraternity by surprise but also has shocked the confidence and faith of the common man, has challenged and raise questions over prevalence of democracy in our country; promising fair, unbiased, independent, transparent and responsible judiciary. Non-politicizing the issue, the grievance on paper is only to the extent of allocation and distribution of cases to benches/judges, both in composition and strength, beyond the adopted customary and conventional system in judicial administration. The matter is neither under garb of speculation or arises out of suspicion, but of concrete admission and affirmation. In gravity, the master of the roster, Chief-Justice of India Hon'ble Mr. Dipak Misra is being accused with conviction, of favouring decisions in cases by mode of selective distribution; compromising the integrity, impartiality and independence of the institution, Supreme Court. Has the blindfold of Lady Justice- Lustitia, been let loose? Is the reigning government loosening the knot?

Dated back in November, 2017 exposed a crack in the apex judicial institution where the Chief-Justice of India declared himself to have discreet, absolute and unquestionable power as to assign what case to which judge; which in heart of today's controversy has become 'benches of their preference'. This situation turns grave and in compelling circumstances Justice J. Chelameswar, Justice Ranjan Gogoi, Justice Madan B. Lokur and Justice Kurian Joseph in an unusual press conference held at 12:00 p.m. on 12.01.2018 jointly stated, "Democracy will not survive if the judiciary is not impartial... we are left with no choice but to communicate it to the nation, that please take care of the institution and take care of the nation." Consequently, a co-signed letter was released which was addressed to the Chief-Justice of India about two months back, addressing on issues and 'less than desirable' administrative functioning of the Supreme Court.

Admittedly, something is not right, moreover not much is in the open to identify what is exactly not right; lastly, who is to correct it? The people of this country are no less than passengers to a plane, with the pilot telling them that something is seriously wrong with the navigation systems. What do passengers do- Pray? The democratic-republic of India has been helplessly issued a warning cum caution over demolition of democracy by means of a compromised third pillar to our Constitution. Although the act and appeal to the people of this country largely comes across and seems to be washing of guilt over responsibility, but people lack jurisdiction and literate means to route a solution. The whistle-blowing press conference which was organized only to disseminate information to the people of this country was followed by circulation of the above-mentioned letter, the reading of which is more in the unwritten.

What was so compelling in circumstances that left these four Senior Judges remediless, leading them to lift the judicial veil of trust, confidence and faith in the Supreme Court and in judiciary

as a whole. It is pointless to debate whether a press conference was the best solution, addressing the problem and ascertaining resolution of the same is what matters now because what has been done, is done. I personally don't affirm the act, but the act forces me to question the matter on merits.

Apart from other details which are still locked within the walls of the Apex Court, there are two apparent controversies that have been brought to light, first, death of CBI special court Judge B. H. Loya and second, the row between the government and the Supreme Court over finalizing the Memorandum of Procedure (MoP) laying down procedure for appointment of judges. There are no further expressions of pointing facts that clearly expose such ambiguities.

Hon'ble Mr. Justice Ranjan Gogoi's one word, "Yes!" in reply to a question at the press conference has brought serious implications and doubts over hearing of two petitions filed by journalist, Mr. B. R. Lone and Congress leader, Shri Tehseen Poonawala, demanding independent probe into the death of Judge Loya, who presided over a case in connection with encounter of suspected extortionist, Sohrabuddin Shiekh; where one of the prime accused was Bharitya Janata Party's President, Amit Shah. Democracy in theory delights the hope of a common citizen of this country; where in reality democracy has turned out to be with the ruler than with ruled.

In print, the three referred cases *R. P. Luthra vs. Union of India*, *Supreme Court Advocates-on-record Association and Anr. vs. Union of India* and *Re. Hon'ble Shri Justice C. S. Karnan* as mentioned in the letter relate to recalling of order dated 27th October 2017 passed in the case of R. P. Luthra (supra), by a different bench (headed by CJI himself) to the one which had the jurisdiction to hear the matter, alleging unreasoned action on part the Chief Justice of India of deviating from procedure and causing un-explained delay to finalize the Memorandum of Procedure (MoP) on appointment of judges. The motive behind such assigning of the case to a bench headed by the Chief-Justice of India himself and not to the regular beach is a matter not within the reach of an *aam aadmi*.

The conviction and affirmed opinion of the four Senior Judges over what has 'already damaged the image of the institution to some extent' has left us with veined speculation. This is not a case of delegation of duty or responsibility, but reflects the helplessness and cluelessness of the situation, as to remedy for them and the way-out for us, Indians. Maybe, this is just the tip of the ice-berg, assuming so is even more threatening. Media reports and channels have rampantly covered the issue and are suggesting solutions to this saddened and regretted event. The question raised is who will judge our judges? Presumably, it is not out of context to comment that the Supreme Court's bedroom discussion (Full Court) has come out in the open; and has irrevocably and undoubtedly tarnished its reputation, which our placid cum fickle public is going to remember for long.

Politically speaking, Indian National Congress President, Rahul Gandhi on the death probe of Judge Loya, demanded a fresh probe by means of a Special Investigation Team (SIT) and his party may look into initiation of impeachment proceedings against the Chief-Justice of India, independent unacclaimed sources said. In counter the Bharatiya Janata Party has accused the

former of politicizing the internal issues of the Supreme Court. It seems long before the reality will touch the ground, if it ever will.

In history, though no judge has ever been impeached by our parliament but under different circumstances and for various varied-reasons impeachment proceedings have been initiated against many; Justice Soumitra Sen of the Calcutta High Court in 2011, Justice P.D. Dinakaran, Chief Justice of the Sikkim High Court in 2011, Justice J.B. Pardiwala of the Gujarat High Court in 2015, Justice V. Ramaswami, Chief Justice of Punjab and Haryana in 1993. In light of what the judiciary faces in today's date, a fair and proper government must interfere and address the situation firmly; need being a historic step could be the final result!

I feel concerned and find malice in unmeritorious statements describing SC judges' revolt as an "internal matter" of the apex court, by Bharatiya Janata Party's spokesperson, Sambit Patra. In addition, he submits, "AG has given the statement. No politics should be played. Surprised and pained that Congress which has been rejected number of times by people in elections is trying to gain political mileage, it has exposed itself." Internally, there can now only be a compromise, compromise of justice itself. They fail to understand that when the institution's top officers have come out in the open, the gravity of the situation is bigger than national elections. A judge's repute is well established in the statement, "A Judicial scandal has always been regarded as far more deplorable than a scandal involving either the executive or a member of the legislature" (J.T. 1991 3SC 198).

"A single dishonest judge not only dishonours himself and disgraces his office but jeopardises the integrity of the entire judicial system" said our Supreme Court. In my mind, democracy in idealism is a delusionary concept, it can only survive 'trying' to bridge between the 'haves' and the 'have-not's'. As far as the honorable judiciary is concerned-

A wise man will agree, 'fairness' and 'impartiality' are attributes of non-transparency because justice will always seem to be done, as justice is a sensation- not a fact.

Is it time for judicial transparency!?
