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Judicial integrity: Lessons from the past

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Chief Justice of India Sabyasachi Mukharji's advice to Justice Ramaswami to desist from discharging judicial functions so long as investigations continued is worthy of emulation.

"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 our country, the Supreme Court and the High Courts have set very high standards in protecting the citizen's rights, the freedom of speech and expression, the rule of law, the independence of judiciary and judicial review. The Indian judiciary has earned and won international accolades. Its achievements are second to none. Every citizen, every judge and every lawyer owes it to the country and to future generations that this lustre is not dimmed, this reputation is not tarnished, this bulwark of freedom is not undermined or weakened.

When citizens and lawyers make complaints against the functioning of judges, it is because they want to preserve this vital institution in our democracy.

The Justice Dinakaran controversy is 'snowballing' and is diminishing the image of the judiciary with every passing hour. National dailies have been reporting various news items. Some of the headlines run — "Dinakaran elevation put on hold" (*The Hindu*, 11.10.2009); "TN report may nail Dinakaran" (*The Times of India*, 11.10.2009); "Dinakaran row: Panel may ask Govt. to consider others" (*The Indian Express*, 11.10.2009); "Supreme Court studies secret report on Dinakaran" (*The Times of India*, 11.10.2009); "Dinakaran move to SC held up" (*The Asian Age*, 12.10.2009); "Government to take possession of Judge land" (*The Asian Age*, 12.10.2009); "Charges pile up against Dinakaran" (*Hindustan Times*, 13.10.2009); and "TN farmers now add to Dinakaran's woes" (*The Indian Express*, 13.10.2009).

The informed citizen is inquiring — what is happening? What are the decisions of the Collegium? Why the delay in appointing four other State Chief Justices to the Supreme Court — all senior to Justice Dinakaran? Why is Justice Dinakaran being permitted to sit and discharge judicial functions in spite of serious allegations being looked into? Even though over a month has expired there is no press release, official statement or information officially given or emanating from the Supreme Court.

In contrast, it is interesting to recall the sequence of events that took place in the case of Justice

V. Ramaswami in the 1990s when he was a sitting judge of the Supreme Court. In the beginning of May 1990, reports started circulating about various questionable acts of Justice Ramaswami when he was the Chief Justice of the Punjab and Haryana High Court. There were reports submitted by the Internal Audit Cell of the High Court, a report by the District and Sessions Judge (Vigilance), reports and audit queries from the Accountant General's Office.

The then Attorney-General of India, Soli J. Sorabjee, and the president of the Supreme Court Bar Association, K.K. Venugopal, and other leaders of the Bar met Chief Justice of India Sabyasachi Mukharji and drew attention to these reports. On July 20, 1990, CJI Mukharji, when some of us were present in Court, got up a few minutes earlier and announced that he would come back to make a statement. He did so after 4 pm. His statement was widely published and is part of the Supreme Court record.

After referring to the reports circulating about Justice V. Ramaswami, his statement to the Bar, in open Court contained the following: "This was an unprecedented and an embarrassing situation. It called for caution and establishment of a salutary convention." ... "The Supreme Court must uphold the rule of law. It is, therefore, necessary that those who uphold the rule of law must live by law and judges must, therefore, be obliged to live according to law." ... "We must, therefore, ensure that there is no conduct of the judges which affects the faith of the people that judges live according to law."

... "I was constrained, in those circumstances, to advise Brother Ramaswami to desist from discharging judicial functions so long as the investigations continued and his name was cleared on this aspect." ... "Since I had assured the learned Attorney General, the Law Minister, the president of the Bar Association and others that I will look into it, I thought I must convey to you the result of my looking into it."

Justice Ramaswami went on leave.

The sequel to Justice Ramaswami's case needs to be recalled. On August 29, 1990, CJI Mukharji constituted a Committee of three judges — Justice Ray, Justice Shetty and Justice Venkatachaliah and sought their advice as to whether Justice Ramaswami should sit in Court. Unfortunately, CJI Mukharji died prematurely on September 25, 1990, and the matter took a different turn under the leadership of Chief Justice Ranganath Misra who was appointed CJI on October 6, 1990. The Committee of three judges made its report on November 6, 1990, saying it did not see any ground of moral turpitude which would prevent Justice Ramaswami from discharging his duty as a judge. The Committee made clear that "This exercise is not to sit in judgment over the conduct of Justice Ramaswami, much less to engage ourselves in any exercise to ascertain whether his conduct is blame-worthy in any manner."

Thereupon, Justice V. Ramaswami started discharging his judicial duties. But my recollection is that at the request of the Bar, the Court agreed that advocates who did not want their matters taken up by him could request listing before another Bench.

The Lok Sabha Speaker, on an impeachment motion, appointed a Committee consisting of Justice P.B. Sawant of the Supreme Court, Justice P.D. Desai, Sitting Chief Justice of Bombay,

and O. Chinnappa Reddy, a former judge of the Supreme Court. The Committee in its report gave adverse findings opining that the acts constituted “misbehaviour”.

The rest is history. The ruling party under the leadership of Prime Minister Narasimha Rao abstained from voting and the impeachment motion failed. (196 for the motion, none against, 205 abstentions).

In the Justice Dinakaran matter, after September 8, 2009, several representations with facts and documents containing serious allegations have been sent to the collegium by responsible lawyers regarding the appointment of Justice P.D. Dinakaran.

There is no sharing of information by the Supreme Court collegium with the public or the Bar, no official statement, no press release. Rumour and speculation are having a field day. It is said “there is nothing busier than an idle rumour.”

In Justice Ramaswami’s case, the statement made by CJI Mukharji in open court set a precedent and should be regarded as a healthy convention. What is the way forward? First, if the representations made to the collegium are of sufficient gravity, surely the precedent by which Justice Mukharji requested Justice V. Ramaswami to go on leave is worthy of emulation. Secondly, the way forward would be to take the public, the legal fraternity and the media into confidence by regular official releases or press statements issued under the authority of the Supreme Court collegiums. Thirdly, before the snowball turns into an avalanche, it is important to know whether his appointment is going forward or not.

The wise words used by the three Judges Committee in the Ramaswami case need to be recalled: “A judge’s morals are not the standards of the marketplace but are the “punctilio” of a higher code.

... “There has, indeed, been a growing sense of cynicism and concern in public mind about the fall in the standards of judicial conduct and of the wisdom of such constitutional immunity for judicial improprieties from public scrutiny and censure.

... “Today, the incantation of maxims of high judicial morality has few takers; acceptable precept is acceptable example alone. Sunlight is, perhaps, the best disinfectant.”

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