

Deccan Herald, Wednesday, May 12, 2004

## MAIN ARTICLE

# Warnings from the Supreme Court Who will judge our judges?

**In view of the recent SC observations, something has to be done urgently to make judges accountable and removable**

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The Supreme Court has confirmed that its comparison with Nero is intended to be seen as a brand on those responsible for the communal carnage in Gujarat two years ago - the worst of its kind in independent India. True, the apex court has not identified the persons it had in mind but nobody will have any difficulty in recognising Gujarat Chief Minister Narendra Modi as the principal protagonist. If the two-judge bench of Justice Doraiswamy Raju and Justice Arijit Pasayat chose to refer, in plural, to "modern day Neros" it was to give Mr Modi the comfort of the company of those he had managed to turn into his accomplices.

A standard reference book, Brewer's Dictionary of Phrases and Fables, identifies Nero as "any bloody-minded man, relentless tyrant, or evil-doer of extraordinary cruelty; from the depraved and infamous Roman Emperor C. Claudius Nero (AD 37, 54-68), whom contemporaries believed to be the instigator of the great fire that destroyed most of Rome in AD 64, and to have recited his own poetry and played his lyre while enjoying the spectacle. Nero blamed the Christians." For whatever happened under his watch in Gujarat, Narendra Modi blamed the Muslims. The Modi government approached the Supreme Court for expunction of the Nero parallel and got only another stinging censure. India's highest law court does not think that the guilty men in Gujarat merit forgiveness. They are responsible for deliberate rapes, murders and burnings followed by calculated injustice to the victims.

The Supreme Court has been appalled by the debauching of the justice delivery system in Gujarat. It characterized the trial court's way of dealing with and acquitting all the 21 accused in the horrifying communal capital crime at the Best Bakery as a "monstrosity" and castigated the Gujarat High Court for its straying from the "judicial calm and detachment required of the learned judges" while hearing an appeal. The judiciary in Gujarat had become so undependable that the Supreme Court ordered a retrial of the Best Bakery case outside the State, in Maharashtra.

### **Failure was deliberate**

The words used by the Supreme Court leave no scope for denying that the failure of the Gujarat High Court was deliberate. And when that is so, one can argue that this can happen again and therefore the judges concerned are not fit to remain in office. **The framers of India's Constitution failed to foresee the degeneration that would come over the polity in only about half a century. They thought more about appointment of judges than about their removal. The assumption then was that the Indian higher judiciary would always have enough inner moral strength to remain incorruptible. Impeachment of a judge on grounds of misbehaviour or incapacity has been provided for but the process depends on big numbers of sponsors in the Lok Sabha or the Rajya Sabha and the final approval on huge majorities in both houses of parliament. The effect in practice was seen when a committee of his peers found Justice V Ramaswamy guilty on several counts of corruption but the Congress Party led by P V Narasimha Rao ensured the defeat of the impeachment motion in parliament. Myopic politicians could not see the nation's interest.**

When corruption is growing rank all around us it is illogical to expect that the judiciary can stay immune from the evil. The decline is visible. Examples: in a case in Delhi a former High Court judge was outwitted into resigning and is facing a charge of collusion with a land shark. In Chandigarh several judges thought that their free membership of a none-too-tidy golf club should not have been questioned by their chief. Rumours were heard recently of gallivanting by some judges of another High Court. A former Chief Justice of India, S.P.Bharucha, said a few years ago that while about 20% of the judges in India had become corrupt, there was virtually no way to discipline the black sheep in the Supreme Court or the High Courts. Justice V N Khare, who retired as the chief two weeks ago, put the question crisply : "Who will judge the judges?"

The Indian judiciary supposedly treats all citizens as equals but the judges of the Supreme Court and the High Courts are, in Orwellian language, more equal than others. Their conduct in the discharge of their duties cannot be discussed even by India's parliament except on a motion of impeachment. And under a ruling in the case concerning Justice K Veeraswamy of the Madras High Court and the CBI's discovery of a huge amount of money in 1991, investigation of suspected wrongdoing by a member of the higher judiciary can only be done with prior permission from the Chief Justice of India. There are also the laws of contempt which permit anyone making a charge against a judge to be hauled up and tried by the same judge.

#### **Call for reforms**

Some of the judges themselves have called for reforms to counteract corruption in the higher judiciary before the problem gets out of hand. In spite of the din and bustle of the national elections, the two Supreme Court judgements, within four weeks, in the Best Bakery case should be treated by the people of India as a loud warning that the country's justice delivery system is being corroded not only by the lure of easy money but the fumes of hate-filled politics. **It is no longer enough to discuss judicial reforms in seminars. Doing something to make the judges accountable and removable without too much difficulty, whenever necessary, is a task that can be ignored or postponed if only the nation's good is kept out of mind.**

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