[**Bias and judges**](https://www.dawn.com/news/1605775/bias-and-judges)

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IT is a pity that India’s supreme court failed the nation during a grave crisis affecting the farmer citizen’s rights. It has propounded a doctrine which will haunt it in the years to come. The agitation which the farmers of Punjab, Haryana and other parts have mounted is notable for its commitment to non-violence and a dialogue with the central government. It is a feat of organisation in which old and young men and women have participated.

Prime Minister Narendra Modi has made it an issue of prestige. He pushed through parliament at breakneck speed three bills which affect the farmers for the worse without prior consultation with them as is mandated by the very fundamentals of democratic governance. The issue is simple. The farmers want the three acts to be repealed. Modi wants them to tabulate their amendments to the acts in order to bypass the fundamentals at stake.

At this stage, the supreme court got involved by multiple and conflicting petitions. It hit upon a sound mechanism; only to stultify it at its inception. On Jan 12, it set up a panel of four to hear both sides make recommendations. All four had made statements explicitly supporting the three acts. One of them did the decent thing by opting out of the panel. The other three stayed put.

Judges are quick to take offence and accuse critics of malevolence.

On Jan 21, responding to objections, the court adopted a sorry attitude. Its response and the remarks it made were wide off the mark. “If you muster a public opinion to malign people, brand people, should that be a ground of disqualification? We have very serious objections to our members being called names, accused of bias, etc. And then they say this court had some interest. What interest can we have? We entered into this in the interest of common people especially farmers.”

It is true that the panel is not an arbitral or adjudicatory body. But its report is certain to tilt public opinion in support of the government. And pray, why did not the court consult the aggrieved side, the farmers, before nominating the four? They have not been ‘maligned’; only criticised, and rightly so. A strange coincidence that all the nominees chosen had pronounced against the farmers.

Judges are quick to take offence and accuse critics of malevolence while accusing others of the same offence.

On Dec 24, 1986, an order signed by five judges was made available to the press. It said: “We want to condemn unequivocally and unreservedly any attempt on the part of a litigant or a member of the public to impute directly or indirectly any bias or prejudice to a sitting or retired judge whether of this court or of a high court.” This was no judicial order. It was attempted legislation on the law of contempt, unnecessary on the facts of the case and unwarranted in law.

But the worst offenders against the ruling were some judges of the court itself, most notably, Justice Praful N. Bhagwati. Less than a month earlier, on Nov 21, 1986, he had said at Bangalore: “Judges are drawn from the class of well-to-do lawyers”, adding, “unwittingly they develop certain biases”. Incidentally, in view of his own enormous awe of the fount of power, a remark he made is very significant: “Independence (of the judiciary) does not consist in striking down everything the government does.”

A few days later, he referred to critics of public interest litigation. All knew that the sharpest critic was the former chief justice of India, Mr. M. Hidayatullah, who dubbed it “publicity involved litigation”. This is how Justice Bhagwati retorted: “Trained in the old British tradition of adversary justice and born and brought up in an era where the doctrine of laissez-faire prevailed, and with their minds fossilised and overtaken by senility they find it difficult to reconcile themselves to the new wind of change which is roaring down the ancient corridor.” Such is the language used by a sitting chief justice of a predecessor at a solemn Law Day function.

As Lord Denning laid down the convention, “In considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless if right-minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit. And if he does sit, his decision cannot stand.”

This test also applies to the three on the panel. It is not for the judge involved but the others to judge whether there is “a real likelihood of bias” or not. Judges have no right to sit in their own cause.

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