

Indira Gandhi Assassination Trial The Fall-out and the Moral Lessons

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The acquittal of Balbir Singh by the Supreme Court of India in Aug. 1988 underscores the significance of what in pre-democratic days was called the 'Majesty of the Law': an awesome phrase derived from a Latin maxim, loosely translated as, "Let Justice be done, though the Heavens fall". The ultimate power of life-and-death is committed by the Constitution only to the country's highest Court. It has spoken - unmindful of resentment, uncaring for applause. That is how it should be.

Constant Refrain

The decision has many useful lessons - for Judge, lawyer, and litigant. The first is that the exoneration of Balbir Singh of complicity in the murder charge puts paid to the canard that decisions of the Supreme Court in important cases are influenced by the "hydraulic pressure of great events". The assassination of Mrs Gandhi was as sad as it was momentous - an event catastrophic in consequences. Many people at that time - well-intentioned, reasonable, people - were convinced that those whom the authorities had roped in as assassins 'should be summarily executed. What's all this fuss about?' - that was the constant refrain. The final verdict handed down a couple of weeks ago gives the answer. The "fuss" (or to be more accurate, the trial) was about who was guilty.

There is a vital distinction between a dastardly crime and the person or persons responsible for it. Only a Judge, because of his mental equipment, experience and training is able to perceive the distinction. In the public mind, even before the trial begins, the accused - because he is accused - must be the criminal. The lofty presumption of innocence is too often torn to shreds after the effervescent media have given their own version. But the Judge, because he is Judge, must pay no heed to what they say in the Press. Sir Mathew Sausse, first Chief Justice of Bombay one hundred and twenty-five years ago, **never read the daily newspapers for fear they would influence his decision.**

He had a point. But in this day and age, of proliferating news-and-views, some rumoured, some true, some half-true, a Judge cannot bury his head ostrich-like in his pile of lawbooks oblivious to all that goes on around him. He sees, he reads, he even hears: we cannot deny our Judges the right which every other citizen enjoys. **But when he speaks from the Bench he can only speak from the record of the case.** On the occasions (fortunately rare) when he does not, public confidence in the administration of justice is shaken. **For a Judge, populism is a dangerous indulgence.** He may at times flirt with it, get some mileage in the publicity it brings, but in the end no one likes the Kangaroo Court: besides, the Constitution says that the public must take the judgement and the law from the highest court, not the other way round. This is the message the discerning will read from the decision of the Supreme Court of India acquitting Balbir Singh.

No Reflection:

The fallibility of Judges is another fall-out from the case. Convicted and sentenced to be hanged by the Sessions Court, the conviction confirmed by a Full Bench of the High Court, Balbir Singh's exoneration by the highest Court requires explanation. How could a trio of able and independent Judges of the High Court hold a man guilty of murder on evidence

which three Judges of the Supreme Court, equally capable and independent, have held to be not guilty of murder? Odd as it may seem to the uninitiated, that is how that tier-system of justice operates. The reversal by the Supreme Court of decisions delivered by any other court including a High Court - whether in a civil or a criminal case - does not reflect upon the ability or competence of those whose judgement is reversed. It only means that a Court of higher constitutional authority does not see the matter in the way in which the Court below does.

The tier-system of justice is structured not to eliminate but to reduce the chances of human fallibility. Judges in the highest Court too are fallible; they would be first to admit that they are. Though it was not always so. Many, many years ago when the Royal Court of Justice was opened by Queen Victoria, the Lord Chancellor called a meeting of the Judges to consider the draft of an Address to the Queen. It said: "Your Majesty's Judges are deeply sensible of their own many shortcomings ..." at which Jessel M.R. objected, saying: "**I am not conscious of many shortcomings and if I were I would not be fit to sit on the Bench.**" After some wrangling, a compromise was suggested by Lord Justice Bowen: "Why not say that we are all deeply sensible of the many shortcomings of each other!" Under the Constitution, a Judge of the highest Court is not infallible only because the judgement he delivers or participates in is not his judgment - it is the judgment of the Supreme Court where he sits. And it is the judgment of the Supreme Court that is by the Constitution declared to be final.

Rule of Law

And then how long it all took! What was so difficult in finding out and adjudicating, within a month or two of the assassination, who were the murderers? It was possible under other systems of justice - where you're guilty till you admit your guilt, and then you are doubly guilty! That not be under a system based on the rule of law. The vicissitudes of the case and the diversity of the decision ultimately reached with regard to one accused highlights an important fact often overlooked by the litigant and members of the public. **There is an inherent tardiness in the nature of the judicial process.** The administration of justice according to law is very difficult, very onerous business and, quite often, there are two views that can be taken, and the choice that is to be made does not rest on the personalities involved, but on fine legal principles. The process of arriving at a conclusion on evidence given by truthful, and not-so-truthful witnesses is a slow, tortuous task. **But if it is so slow; why not change the system?**

I have been repeatedly told that the criminal justice system in the USSR is expeditious and deserves to be emulated in India. But just two months ago I read that General Secretary Gorbachev told the Supreme Soviet that the Soviet legal system was "conservative", based on command-style administration rather than democracy", and needed to be changed! After all, any system is only as good as the people who administer it and maintain it: the fault, dear Brutus, is not in our stars (nor our systems!) but in ourselves ... Though we could improve the functioning of the legal apparatus if we all ran it more efficiently.

Advocate's Role

The murder case has focussed attention on the role of the advocate as well. However unsavoury the cause, an advocate is not the judge of it. He is an officer assisting in the administration of justice and he assists most effectively when he does his best for his client. A group of lawyers led by a prominent Senior Advocate came forward to take up the defence, "Defending the assassins of the Prime Minister - shocking!" That was the almost universal outcry; because in the public mind all the accused had to be guilty since the

police, after investigation, brought a case against them. It is only when the Supreme Court has now declared one of them to be not guilty that we come to realise that neither gossip nor the printed word is to be believed only because it is circulated. A useful lesson for the citizen who has no time to reflect on what he reads and hears.

Could I sum up in a sentence the ultimate thrust of the judicial verdict of the final Court? Yes, I can - **howsoever high you be, howsoever low you stand, the Law is always above you.**



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