



Circumventing Justice – Emerging fad of India

By

*Dr G ShreeKumar Menon, IRS (Rtd) Ph.D (Narcotics),
Former Director General
National Academy of Customs Excise and Narcotics,
& Multi Disciplinary School Of Economic Intelligence,India,
Fellow, James Martin Center For Non Proliferation Studies, USA.
Public Administration, Maxwell School of Public Administration, Syracuse
University, U.S.A.
AOTS Scholar, Japan
Registrar, Yenepoya University, Mangalore - 575018, Karnataka State, India.
Mobile:9810144308, 7022697988*

Democracy, I believe, is one of the most pernicious forms of political institutions ever conceived by man. Even a most enlightened society would disintegrate into utter chaos in a democracy, for it is a fertile ground that permits the flourishing of insane elements, to the chagrin of wise and sociable people. There are regressive elements that constantly want to put the clock back, and therefore engage in internecine conflicts, at all levels. It is inevitable that all such conflicts come ultimately before the Courts for redressal and resolution. However, an emerging trend in our country is to defy the verdict of the courts. The political and executive organs have always perceived the judiciary as an adversary. There have been repeated incursions into the judicial arena to make it subservient by way of blocking judicial appointments, non filling of vacancies, inundating and choking the courts with frivolous appeals. Hats off, to a handful of

eminent judges, who have braved and foiled many attempts to cripple it. But, unrelenting politicians have in the past experimented with Ordinance, to successfully circumvent judgments which are not to their liking. Many path breaking judicial verdicts have been made redundant by passing an ordinance to satisfy select pressure groups. Those of us familiar with tax laws are quite conversant with the ways of governments and their penchant for nullifying judicial verdicts by resorting to ordinance route. Many tax laws which were struck down were resuscitated by the ordinance route. However, with ordinances now being viewed with suspicion, politicians have found it convenient to let loose violent mobs to protest against judicial verdicts.

Recent developments are alarming. A river water dispute verdict was rendered otiose by violent mobs destroying public property for days at a stretch. A Constitutional crisis was created by sheer disobedience of refusing to comply with the order of the Apex Court! It must be remembered that Article 144 of the Indian Constitution states that all authorities – civil and judicial – should act in aid of the Supreme Court. Article 142 of the Constitution vests the Supreme Court with powers to enforce its orders and punish for contempt if such an exigency arises. Willful disobedience of an order and failure to fulfill the constitutional obligation to implement law and order under Article 144 – which would enable the instructions of the Supreme Court to be followed – are valid grounds for the court to draw upon its powers to ensure compliance.

Failure to follow court directives has serious consequences for a country as huge and fractious as India. This is why Entry 2A of List 1 of the Seventh Schedule to the Constitution empowers the Union to deploy any armed force of the Union or any other force subject to the control of the Union or any other unit in any State in aid of the civil power.

The Supreme Court in the case of *State of Haryana v. State of Punjab*, (2004) 12 SCC 673 had observed “The Constitution provides for an ordered polity within this country to promote integrity of the country. When disputes arise between States there are usually political underpinnings. The resolution of such a dispute in favor of one party will invariably have a political impact. Article 131 of the Constitution has therefore given this Court the exclusive jurisdiction to decide such a dispute strictly on legal considerations and in keeping with the provisions of the Constitution. To resist the execution of the decree on the ground that it would have political fallout would result in subversion of the Constitution, an endorsement of anarchy and the disintegration of the country. Apart from rendering the provisions of Article 131 a dead letter such a stand is contrary to Article 144 which requires that all authorities, civil and judicial, in the territory of India *shall* act in aid of the Supreme Court. It is not in the circumstances expected, that Governments whether at the Centre or in the States, will not comply with the decree of this Court. By refusing to comply with the decree of this Court under Article 131 not only is the

offending party guilty of contempt but the very foundation of the Constitution which the people governing the State have sworn to uphold when assuming office and to which this country owes its continued existence, is shaken. It is, we repeat, the constitutional duty of those who wield power in the States to create the appropriate political climate to ensure a respect for the constitutional processes and not set such processes at naught only to gain political mileage. As was observed by the Constitution Bench in *Cauvery Water Disputes Tribunal* [1993 Supp (1) SCC 96 (2)] when an Ordinance was passed by a State seeking to nullify the order of this Court: (SCC pp. 142-43, para 79) “Such an act is an invitation to lawlessness and anarchy, inasmuch as the Ordinance is a manifestation of a desire on the part of the State to be a judge in its own cause and to defy the decisions of the judicial authorities. The action forebodes evil consequences to the federal structure under the Constitution and opens doors for each State to act in the way it desires disregarding not only the rights of the other States, the orders passed by instrumentalities constituted under an Act of Parliament but also the provisions of the Constitution. If the power of a State to issue such an ordinance is upheld it will lead to the breakdown of the constitutional mechanism and affect the unity and integrity of the nation.”

It is sad to see another State embroiled in chaos over the demand to torture a dumb animal in the name of sport. People forget their own hoary past and tradition. I had in an earlier article narrated the legend of Judge Ammavan of Kerala. Today, it becomes imperative to narrate another fantastic legend. This incident in Periya Puranam explains an event that happened in the life of the Chola king who became known as Manuneechi Cholan because of the glorious justice he ordered.

One day his young son was riding his chariot on the main roads of the capital Thiruvavur. A calf suddenly got hit by the wheel of the chariot and was crushed to death. The cow which saw its calf killed on the street was stricken with grief. It licked, cried and sat in grief near the dead calf.

The son of the king was appalled at what had happened. He rushed to the scholars in order to do the deeds of penance before facing his father. Meanwhile the grief stricken cow went to the palace and rang the bell hanging in the front with its horn. (Calling the king to do justice). The king rushed to the gate and saw the crying cow ringing the bell. A wise minister told the king about the death of the calf when it entered beneath the chariot abruptly. On hearing that the king underwent unexplainable sorrow. Unable to bear the sight of the crying cow he sat there in sadness and asked the ministers what he could do to correct the misdeed. The ministers said he should make his son undergo the penance that the Vedic scholars made for the killing of cows.

The king lamented "How could I do injustice to this poor cow because it was my son who did the misdeed. When I do not leave somebody who kills a life how can I show a different attitude towards my son? Isn't it the responsibility of the king to ensure that the lives that live in his kingdom are protected? If I make another rule for my son won't the

ancient system of justice be scoffed at?" The ministers told that the practice had been that the penance rites are done in order to come out of this sin and hence it would be just to observe that tradition. The king was annoyed at their response and said, "You speak not understanding the spirit and truth behind the justice. A big sin has been committed by killing the creature. The compensation for this deed would be to execute my loving son the same way the calf was killed." The ministers were terrified and went away. The king ordered that his son be run over by the same chariot and himself overrun his son under the wheels of the chariot. The subjects of the land wept wondering the king's stand on justice. Lord Shiva blessed the king for his sincerity towards justice and by His grace the calf and the son of the king came back to life. The cow and the king got relieved of their agony. This incident is immortalized in Madras High Court premises where the statue of the great King Manu Needhi Chozan is installed.



It is sad to see and hear that the once fabled land which witnessed a cow getting justice should now see mobs demanding the right to frighten and hound bulls on the streets. What a fall my countrymen!