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The Curious Case of Justice Karnan

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The actions against Justice C S Karnan of the Calcutta High Court by the Supreme Court, since contempt proceedings were initiated against him, appear to be a case of misplaced importance. The case raises questions regarding the disciplinary authority of the apex court over individual judges and the range of contempt jurisdiction.

The Supreme Court, in a rare move, has initiated contempt proceedings against Justice C S Karnan, a sitting judge of the Calcutta High Court, and has restrained him from hearing cases. Contempt proceedings were initiated because he had levelled allegations of corruption against several judges of the Supreme Court and high courts without substantiating his claim with any evidence. He had written letters to the chief justice of India and even to the Prime Minister with a series of allegations against 20 high court judges. He also alleged that illegal money was recovered from some high court judges after the government announced demonetisation.

A seven-judge bench comprising the chief justice of India and six other senior judges of the Supreme Court took notice of those letters and issued a suo motu contempt ruling upon Justice Karnan in an unprecedented exercise of judicial reprimand. He was summoned to appear in court in February this year. He refused to attend the contempt proceedings however, instead asking for a compensatory amount of `14 crore from the seven-judge bench for "disturbing his mind and normal life."

The Supreme Court then issued a bailable arrest warrant against Justice Karnan, to ensure his presence in court for the next hearing on 31 March. During that hearing he requested that the chief justice restore his judicial work. He further informed the bench that he would not attend the next hearing, and that the court may arrest him if it pleases.

Since these events, Justice Karnan has "ordered" the seven-judge bench, including the chief justice of India, to appear before him at his "residential court," to face proceedings for insulting him in open court during the 31 March hearing. He alleges that this constitutes an offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1989. He alleges further that he has been singled out because of his caste identity. He has

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attempted to restrict their air travel, and has ordered the Central Bureau of Investigation to probe his allegations against them.

On 2 May the Supreme Court took note of his orders finding them "contemptuous" and ordered that he be administered a medical test, stating that "the tenor of his press briefings and purported judicial orders passed by Justice Karnan, prima facie suggest that he may not be in a fit medical condition to defend himself in the present proceedings." In his response issued to the press, Justice Karnan announced that he would not cooperate with the administration of a medical test, and that he had issued non-bailable arrest warrants against the seven Supreme Court judges for not appearing before him. At the time of writing, the Supreme Court has directed that no authority is required to act on any orders issued by him.

An Escalating Controversy

In 2011 Justice Karnan wrote to the National Commission for Scheduled Castes (NCSC), alleging that he faced caste-based harassment from brother judges of the Madras High Court, where he was a judge at the time. He also addressed a press conference on the matter from his chambers. These actions were unprecedented and even led to an agitation in the Madras High Court campus. The then NCSC Chairman, P L Punia, had forwarded Justice Karnan's letter to the then Chief Justice of India, Justice S H Kapadia who was the appropriate authority to examine the matter. Caste-based discrimination—if any is to be found in the highest corridors of India's judiciary—is a grave offence and calls for serious and sensitive handling. Justice Karnan, as a high court judge operating from a position of authority, if aggrieved, could have utilised in-house mechanisms available to him to address the problem. Writing a letter to the NCSC turned into an empty formality; the act rather diluted the gravity of the deeply entrenched problem of caste-based discrimination.

In 2014 Justice Karnan barged into a court room at the Madras High Court, during a hearing before a special bench of a public interest litigation (PIL) on a matter relating to the appointment of certain judges. He told the bench in open court that the selection was unfair and that he wanted to file an affidavit in his name.

This incident raised eyebrows among the legal fraternity. Through his intervention in a PIL which was being argued before brother judges, Justice Karnan had exhibited a streak of populist sensationalism, resorting to demonstrative opposition to the established system. He could have instead attempted to deploy institutionalised mechanisms of persuading his own collegium, to ensure effective representation of deserving candidates from underprivileged and marginalised sections of society.

Following this incident, the then Chief Justice of the Madras High Court, Justice R K Agarwal (who is now in the Supreme Court), wrote to the then Chief Justice of India, Justice P Sathasivam, requesting that Justice Karnan be transferred to some other high court.

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Justice Karnan also wrote to Justice Sathasivam and Justice Agarwal, stating that he wished to stay on in the Madras High Court, in order to fulfil his obligation to prove the allegations that he had raised against the chief justice and the other judges of the high court. It is believed that he wrote this letter perhaps to stall his anticipated transfer.

Justice Karnan subsequently wrote to the joint registrar of the Right to Information section, alleging irregularities in the appointment of district judges. He sought details of the selection process in order to file a complaint before the President of India. Meanwhile 20 judges of the Madras High Court jointly wrote to the chief justice of India, requesting Justice Karnan's transfer.

In 2015, the next Chief Justice of Madras High Court, Justice Sanjay Kishan Kaul (presently a Supreme Court judge), constituted a recruitment committee to interview candidates for the recruitment of civil judges. The committee comprised Justices V Dhanapalan, R Sudhakar, D Hariparanthaman, N Kirubakaran and R Mala, the Tamil Nadu Public Service Commission chairman and other officers. Candidate interviews were scheduled from 15–21 April.

On 16 April, Justice Karnan initiated a suo motu writ proceeding in which the chief justice's administrative order was stayed and the Public Service Commission chairman was restrained from conducting interviews. He also ordered CBI to look into Justice Dhanapalan's educational qualifications. Justice Karnan further objected to the inclusion of Justice Sudhakar and Justice Hariparanthaman in the committee. His allegation was that the fairness of the selection process would be under strain because the two judges were from the same family and community.

On 17 April, Justice Karnan's suo motu order was stayed by a division bench of the Madras High Court. The bench considered questions of jurisdiction and propriety with regards to Justice Karnan's order, and maintained that it is the prerogative of the chief justice to distribute business of the high court, both judicial and administrative, and that no other judge of the court could exercise such power.

On 30 April, Justice Karnan reiterated his previous order, violating the division bench's stay order. He threatened the Madras High Court chief justice that he would initiate contempt proceedings against him.

In May, the Madras High Court registry moved the Supreme Court asking for a stay on Justice Karnan's order. A Supreme Court bench headed by Chief Justice of India, Justice H L Dattu agreed, and stayed Justice Karnan's 30 April order. The bench maintained that the matter of judicial appointments should continue without any further interference.

Meanwhile, in May, Justice Karnan made allegations against a colleague on the bench, accusing a brother judge of sexually assaulting an intern within the high court premises. Once again, Justice Karnan was assassinating the character of a brother judge without

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backing his allegations with any evidence.

In November, Justice Karnan wrote to the chief justice of Madras High Court with copies to the chief justice of India and to the President of India, accusing the then chief justice of Madras High Court of belittling his capacities by giving him "insignificant" and "dummy" portfolios. In his letter, Justice Karnan expressed the desire to go on long leave. He sent a second letter to the Union Law Minister Sadananda Gowda, describing the collegium system as one that produced nepotism and favouritism. He also sent a third letter to the office of the Principal Accountant General in Chennai, asking him to find out if any financial irregularities had been incurred on the part of the chief justice of the Madras High Court and the registrar general.

On 12 February 2016 the Supreme Court ordered his transfer to the Calcutta High Court. Justice Karnan promptly stayed his own transfer order. He asked the chief justice of India to file a response on his transfer order and to not interfere in his jurisdiction. By staying his own transfer order he was violating the principles of natural justice; "*nemo judex in causa sua*" or literally "no one shall be a judge in his own cause."

In February the Madras High Court registry approached the Supreme Court, asking for it to restrain Justice Karnan from issuing such an order. On 15 February the Supreme Court stepped in, quashing Justice Karnan's stay order. A bench comprising Justice J S Khehar and Justice R Banumathi ordered Madras High Court to not assign any work to Justice Karnan. The bench also ordered a blanket stay on all orders passed by Justice Karnan after 12 February, but allowed him to contest the petition filed by the Madras High Court.

After this action, Justice Karnan met with Chief Justice T S Thakur and within a week furnished a letter of apology to the chief justice of India for staying his own transfer order. In the letter he attributed his actions to "loss of mental balance due to mental frustrations," over alleged caste discrimination against him in the high court. He agreed to his transfer to the Calcutta High Court, stating that his transfer warrant signed by the President of India had already arrived.

On 21 December, Justice Karnan, now a sitting judge of Calcutta High Court, wrote to the Supreme Court registry, requesting that he be allowed to argue the Madras High Court transfer case himself. The Supreme Court accepted his plea.

In early 2017, Justice Karnan wrote to the Prime Minister making corruption allegations against 20 high court and Supreme Court judges and it was at this stage that the contempt proceedings in the Supreme Court were initiated.

A Case of Misplaced Importance?

What appears rather surprising is that the Supreme Court condoned the indiscretion of Justice Karnan sitting in judgement over his own transfer order, which constituted a blatant

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violation of the basic principles of natural justice. The oldest reference to the principle in common law is in *Thomas Bonham v College of Physicians*[i] which was decided in 1610 by the Court of Common Pleas in England, where the decision of the College of Physicians holding Bonham guilty of malpractice was held by Chief Justice Coke as "opposed to common right and reasons," as the law entitled the college to a share of the fine realised from the delinquent. Chief Justice Coke held that even a law of Parliament could not permit a man to be a judge in his own cause, reasserting the principle of natural justice "nemo judex in causa sua." Seen in this light, Justice Karnan's act of staying his own order was contrary to the primary principle of natural justice and common law. The act in itself called for his removal on the grounds of judicial incapacity. However, once he acquiesced to the transfer, the Supreme Court allowed him to resume judicial work at the transferee high Court.

Further, Justice Karnan had pleaded mental instability as the reason for his peccadilloes. A scenario where a judge himself claims mental instability could even justify their impeachment, on the grounds of mental instability under the Constitution. The Supreme Court though, turned a blind eye to such deviant behaviour.

Rather than rising to the occasion at the appropriate juncture for institutional preservation in the face of Justice Karnan's incompetent conduct, the apex court belatedly woke up to protect its majesty, in response to the insinuation of personal corruption among its brethren. The blanket allegations made by Justice Karnan could hardly stand any ground, as he has not been able to back them with evidential proof. The irresponsible and scurrilous allegations have definitely raised the hackles of the judiciary. However, where gross incompetence in judicial conduct was sought to be glossed over under the excuse of mental instability, subsequently taking note of flimsy corruption allegations appears to be an instance of misplaced importance.

Justice Karnan broke all norms of decency, propriety, and decorum, and even fundamental principles of law and natural justice, yet no steps were taken to prevent him from indulging in irresponsible and unconstitutional behaviour at the time. The Supreme Court, at the time, sought to sweep the dust under the carpet by merely transferring him from one high court to another. Such transfer orders do not solve the problem at all. Such orders suggest instead an escapist approach, and betray wishful thinking that the controversy would die a natural death through the shift of the protagonist to a different place.

From the order of events, apart from a steady pattern of erratic behaviour, no rationale can be derived which would explain the actions undertaken by Justice Karnan. His unstable behavioural pattern, including these irresponsible acts of peer assassination, when seen in the chronology of events, appear to be the handiwork of an unstable mind rather than devious machinations to undermine the judiciary or ridicule the judicial process. Mental incapacity or insanity are established grounds for impeachment and perhaps are not the bedrock of contemptuous reprisals.

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By ordering medical tests for Justice Karnan to evaluate his “mental condition” the Supreme Court bench appears to have acknowledged the patent lack of rationale in his conduct. The Supreme Court has stated that the assessment is necessary to determine whether Justice Karnan is fit to defend himself in the contempt proceeding, and has called upon the judge to subject himself to an assessment by a medical board. Such a stance though, while understandable in the course of an impeachment proceeding where the mental capacity of the judge concerned can be considered under merits, in this case could be seen as an encroachment on Justice Karnan’s rights to dignity and privacy. One must be mindful of the fact that a contempt proceeding is a quasi-criminal proceeding, and as such, a person facing a contempt charge must be treated at par with an under-trial accused of a criminal offence. The rights to dignity and privacy are inalienable facets of the fair trial rights that such a defendant possesses. Although the constitution bench in the Kathi Kalu Oghad[ii] case opined that subjecting an accused to a medical examination may not be an act of self-incrimination, a forcefully administered medical test is anathema to the fundamental right of privacy and dignity as was upheld by the Supreme Court in the Selvi[iii] case. There are no proven cases of dishonesty against Justice Karnan, but there is definitely a yawning deficit of competence. Incompetence, though grounds for impeachment, is not a justification for being held in contempt. Contempt is the power of the court to protect its own majesty and respect. This power is inherent and the power is recognised in the constitution of the high court and the Supreme Court.

The power is regulated but not restricted in the Contempt of Courts Act 1971. For example, in the Sahara case the Court utilised its plenary powers to punish the defaulter who had breached his undertakings to the Securities and Exchange Board of India. Similarly, in the case of Justice Karnan, the Court has sought to extend the limits of its contempt powers to discipline one of its “errant constituents.” Powers of supervision of the high court and its judges is not expressly provided, but over time, through a series of judicial pronouncements, the apex court has sought to regulate the activities of the high courts and the appended district judiciary.

The Constitution of India has vested tremendous powers with the Supreme Court for ensuring complete justice. Under Article 142 of the Constitution, “enforcement of decrees and orders of Supreme Court and unless as to discovery, etc (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.”

Invoking this power, the Supreme Court on innumerable occasions has sought to ensure independence, purity and efficiency in administration of justice by regulating matters of appointments, career appraisals and other related issues in the judiciary, including the high courts.

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With regard to allegations of impropriety against a high court judge, the Supreme Court had earlier fashioned an in-house mechanism for dealing with such complaints without necessitating impeachment.[iv] However, Justice Karnan's is the first case where the Supreme Court has exercised the extreme measure of contempt to discipline a high court judge.

Whither Contempt?

Justice Karnan, in his chaotic manner of challenging judicial order, has thrown up an interesting constitutional imbroglio. Can the weapon of contempt be used against a high court judge instead of impeachment under Article 124 of the Constitution?

The use of contempt jurisdiction in place of a more protracted and often abortive process of impeachment may be attractive but it has far reaching consequences in the maintenance of constitutional balance between different organs of the government and their exclusive domain. Impeachment of a judge is a core premise of parliamentary sovereignty. The use of contempt jurisdiction in this case constitutes an insidious tip-toeing of the judiciary into what is a parliamentary prerogative. Though this may be an expedient tool in deserving cases, the method is fraught with dangers of abuse in the future, which may unsettle the fine balance of separation of powers under the Constitution. It is well known that hard cases make bad laws and the exercise of contempt jurisdiction against a constitutional functionary in overlapping cases must therefore be conducted with necessary circumspection and caution.

The Supreme Court has appellate jurisdiction over the high courts, but the Constitution does not explicitly allow administrative and disciplinary control. The Constitution makers probably refrained from bestowing such powers on the Supreme Court keeping in mind the high prerogative and powers that the Constitution bestowed on the high courts themselves. The high court is as much a constitutional court as the Supreme Court, though subject to the appellate jurisdiction of the latter. If the appellate authority (intended to correct errors in judicial matters) were to be bestowed with disciplinary jurisdiction under the interpretation of the Constitution, it may impair the independent functioning of the high courts in interpreting constitutional philosophies in a free and fair manner, affecting intra-judicial independence within its hierarchical ranks. Wisely thus, the power of impeachment of a constituent was reserved with another wing of the government, namely the legislature.

Allegations of corruption in the highest judiciary are not uncommon. Prominent personalities like Prashant Bhushan have raised issues of corruption against chief justices of India in the past. Contempt proceedings were initiated against him and the editor of the magazine which published the interview with the said content. However, the case has remained undecided and has been pending for nearly seven years now. Justice Karnan's allegations against his peers and against his seniors in the highest judiciary fall under the same genus of incrimination but appear to have received more attention than the allegation

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made by Bhushan.

It is also interesting to note that an angry letter written by a former chief justice, Justice K Veeraswami, to the inquiry committee constituted under the Judges Enquiry Act for his impeachment, became the subject matter of an earlier contempt proceeding before the Supreme Court.[v] The letter contained sweeping allegations against judges. But contempt proceedings were dropped in the light of clarifications given by him in a subsequent communication. Justice Karnan has also, in his confused and mumbling way, expressed regret. Would it not be in consonance with the magnanimity of justice to accept such contriteness and end a matter which appears to be much ado about nothing?

The senior counsel appearing for the Madras High Court has also suggested to the bench that the proceedings be dropped in view of Justice Karnan's imminent retirement (he retires on 11 June). The Supreme Court bench however, declined, and in addition to ordering the medical test, has suggested that the contempt proceedings will continue Justice Karnan's retirement notwithstanding. It remains to be seen whether Justice Karnan's robust resistance to a medical examination would prompt the bench to draw an adverse conclusion against him. If it does so, the bench runs the risk of reversing the principle of presumption of innocence which is a golden thread running through any adjudicatory process involving corporeal punishment, including contempt.

[i] *Thomas Bonham v College of Physicians* (1610) 8 Co. Rep. 114.

[ii] *State of Bombay v Kathi Kalu Oghad* (1961): AIR 1808, SCR (3), 10.

[iii] *Selvi v State of Karnataka* (2010): 7 SCC 263.

[iv] In *C Ravichandran Iyer v Justice A M Bhattacharjee & Ors (*1995): SCC (5), 457.

[v] *K Veeraswami vs Union of India* (1991): SCC (3), 655.