**Fair process?**

BY BA K H TAWA R BI L A L SOOFI | 8/5/2019

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| `WHILE on the one hand it is of the utmost importance that the courts should act to suppress sedition, it is not less important that the freedom of political controversy on which to a very great extent in modern times, the political health and welfare of the community depends, should not be unduly restricted or hampered.  `It is necessary that the public to which the decision of so many questions of the utmost importance affecting their wellbeing and in certain circumstances, even the destiny, is under modern conditions entrusted should by being acquainted fully with the merits and demerits of the various political theories offered to them, be in a position to judge for themselves along which path of the many, that political propagandists offer to them, their true well-being lies. This involves free criticism of one political party by another`.  In the 70 years since Justice A.R.  Cornelius wrote this in a case that came before a special bench of the Lahore High Court, the people have become less free not more and the space for freedom of speech and that of the press has shrunk. His message is just as relevant in 2019 as it was in 1949.  Justice Cornelius` passionate defence of free speech springs from his deference to, and respect for, the political process. In any democratic polity, the ultimate source of power emanates from the will of the people.  If the country`s destiny is, theoretically speaking, contingent upon how the people exercise that power, it is equally important (if not more) that they are exposed to different viewpoints so they can develop an informed opinion about what they think is in the best interests of the country.  Today however, the government has usurped that role and has become the arbiter of what people can hear, what they can see and what they can say. Opposition leaders have been rounded up and thrown in jail. Of the few who are out, they are not allowed to speak openly and freely.  When Asif Zardari`s interview was taken off air under mysterious circumstances, we were told that a person who is in jail cannot use the temporary respite provided by a production order to give a televised interview. Then, a few days later, an interview with Maryam Nawaz was suddenly taken of f air too. The purportedjustincationfor censorship in the earlier case was no longer applicable here and no explanation was forthcoming. Soon afterwards, three other channels were chastised by suspending their broadcast for no clear reason. With the print and electronic media bullied into submission, the enjoyment of one`s right to free speech and the freedom of the press are nowcontingent upon the benevolence and benefaction of the state.  One of the fundamental tragedies of politics is that the rights and liberties of the people are cherished and prized by all political parties until they come to power and find that the very protections that brought them here now hinder and obstruct political ambition. To control this impulse, fundamental rights like the right to free speech are entrenched in a constitution and an independent judiciary is tasked with ensuring that government excesses do not encroach upon these rights. While this impulse has remained a constant feature of our politics, the constitutional machinery which was in place to guard against it has weal(ened over the years. That is because the state has become smarter. It now uses informal sanctions that are not capable of being judicial reviewed.  What the state does not realise however, is that there is only so far that one can go with this approach. Those in power often make value-laden decisions. Questions ofvalue have no right or wrong answers because reasonable people can have reasonable disagreement over such issues. Each time the government chooses one value in place of another, it creates winners and losers.  What reason do the losers have of com-plying with a decision whose outcome they do not agree with? John Rawls famously argued that people should obey such decisions, even if they don`t agree with the outcome, if in arriving at that decision the proper process has been followed.  The Rawlsian condition of `pure procedural justice` holds only when the process is fair. A necessary condition for the fairness of any process is that all stakeholders should have a voice in the decision-making process.  If alternate voices are suppressed and people are not free to express their opinions, then the losers of the political system have no reason to accept the decisions of today`s winners. This undermines the government`s claim to legitimacy.  Unless things change, the government`s moral and legal claim to authority will come under increasing strain. One hopes that better sense will prevail.  The writer is a lawyer b.soofi@gmail.com Twitter: bbsoofi |  |