

Media and the judiciary

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Mass communication / Journalism

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Continuous and clear communication between groups and institutions is an essential requirement in a political and democratic society. In the complex, fast-moving, multi-faceted world we live, silence for a sustained period is still a virtue because it enables clamour and contemplation instead of head-long articulation. But silence taken too far can become a deadening compliance. It can also be misunderstood as acquiescence in mis-governance. Thus silence has become silver, and is no longer golden.

In the judiciary-executive-legislature nexus, the latter two enjoy disproportionately greater ease and access in making their views known to the nation through news-reports about their daily activities as varied as tape-cutting and bill-making. Though the judiciary in recent years has also become more inclined to participate in public functions and consequently does receive some news coverage, the reporting of its views and actions on matters of public concern are proportionately far less than the information the people have about the views of the other two segments of this triumvirate.

The concept that "judges should speak only through their judgement" is valid only to a limited extent in the age of media and mass communication. To say this is not to suggest that judges should actively pursue and cultivate the media in the normal course of their work. Rather, it is to say that when a country is faced by the kind of exceptional situation with regard to the executive and the judiciary as Pakistan has faced in 1997, then neither the Chief Justice as an individual nor the Supreme Court as an institution can, or should, wait for the years and months it may take for the judicial process in various cases to be completed and then deliver a judgment to finally make opinions known on a major issue.

Subsequent to the elections of 3rd February, 1997 the legislature has become a captive of the executive. With a huge majority in the National Assembly, amendments to the Constitution as well as normal Legislation have been adopted on a push-button basis. Aspects of fundamental concern are determined in 48 hours, or less. (A legislature that "permanently" amends the Constitution in unseemly haste has little moral authority to criticize a judiciary that passes only an interim, not a "permanent" order in less than 72 hours of hearing.) A law that poses ominous threats to the civil liberties of citizens such as the Anti-Terrorism Act

was rushed through both Houses even though the very same executive pillar of the State declines to implement the nominations for the elevation of the High Court judges to the Supreme Court within the stipulated period of 30 days as it is required to do, or if it disagrees, then to give its reasons in writing as per the 1996 judgment.

So frequent and savage did sectarian killings become earlier in 1997 that the Superior Court was obliged to take suo moto notice of the breakdown of law and order. In such a time of widespread insecurity and despair, the executive was using the Government-controlled electronic media to project exclusively, or primarily, the

exclusive control of electronic media and does not allow a dissenting viewpoint from being fully or properly expressed.

If the old norm of "judges speak only through their judgements" were to be applied in present times in its literal fullness, then it would mean that during the hearing of cases, views of judges should neither be spoken, or, if spoken, should not be reported by the media; that judges should sit like silent "mummies" throughout the hearings of a case, saying only innocuous and trivial procedural utterances and waiting for their judgements to convey what they want to say—even if, while the hearing con-

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news and the viewpoint of the executive alone. The viewpoint of the judiciary on issues as diverse as non-implementation of the recommended elevation of judges or suo moto action to take note of the law and order situation received little, or distorted, or no coverage whatsoever.

For the head of the Supreme Court to remain silent in the age of the mass media, when both the executive and the legislature are using those very media every day, is tantamount to allowing dis-information, misinformation and mis-perception to gain ground in the public mind. To remain mute at such a time would be for the Court to fail to inform the people about the real situation and about its own views on important issues.

Over and above the judgments delivered in specific cases which may, or may not, deal with issues of immediate and grave concern to the judiciary, there are substantive themes and crucial points, which need to be brought to the attention of the public before definitive yet ill-informed opinions are adopted.

When the executive uses its abiding leverage with the press to "plant" stories in newspapers, either directly or through rapidly mushrooming unregulated news-agencies, in which the executive and legislature are shown in a favourable light and aspersions cast on the judiciary either covertly or overtly, then the judiciary has every right to use media to express its viewpoint on issues of vital concern to the nation and the State. More so, in a system where the executive already has

continues, the interests of the people and the State are badly and dangerously affected by actions of the executive. Such abstinence from articulation inside or outside the Court would be an abdication of duty.

The judiciary, and especially the superior judiciary, as the court of last appeal, has an inalienable right to express its own viewpoints through the media. The conditions in which such articulation is absolutely fit and proper are:-

a) When a case being heard is of public importance and not just of a private, personal or commercial nature;

b) When the central issue concerns a vital social or national interest, or when the principles and nuances of the relationship between the pillars of the State are being argued;

c) When the executive and/or the legislature use monopolistic access to electronic media to give only a one-sided version of issue and particularly in matters concerning the relationship between the executive and the judiciary;

d) When the executive blatantly violates a judgement of the Supreme Court, and when there is no petition pending in the Court on this subject helping to raise public awareness on the lapse committed by the executive.

There is an obvious responsibility on the judiciary that when it deliberately uses the media to protect the independence of the judiciary, it should do so in a balanced, well-modulated manner that does not compromise the dignity and credibility of the judiciary.