

## Self-destruct or the Practice of Nihilism

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A political ideology which considers an existing political order, social institutions and even values to be outdated, wrong or even unwarranted can result in the kind of destruction which followed the Bolshevik Revolution in Russia. However, the Leninist vision of what the new social order should be was clear and, therefore, the destruction of the Tsarist regime was not an exercise in nihilism. When the change took place it was inevitable that there would be some anarchy, but because the basic structure of the Bolshevik State was simultaneously created a new regime, a new polity, a new social structure took over, Russia became the Soviet Union and the country survived and grew from strength to strength. Such a revolution is legitimate and though the change is sudden and initially destructive and though it is not evolutionary like a democracy, at least it does not create a black hole of nihilism.

India is a democracy in which Article 19 gives complete freedom of speech and expression. Therefore, every India has the right to have to express his own ideas and ideology and there is no restriction on this, subject to what is stated in Article 19 of Constitution, that is, reasonable restrictions for the maintenance of national security and integrity, guarantee freedom to others and maintain public order and decency. That is why there is an environment of free for all in the matter of thought and expression of such thought, subject only to ensuring that this does not infringe the rights of others. There is, however, Part IVA of the Constitution which must be read as a continuation of our fundamental rights and that is the part which gives our fundamental duties through Article 51A. In this it is the duty of every citizen to promote harmony and spirit of common brotherhood, to respect constitutional ideals and institutions and to strive towards excellence in all spheres of individual and collective activity. The right to advocate nihilism is therefore, moderated by the duty to abide by the Constitution and to respect its institutions. It might be worth remembering that the Council of Ministers, the Supreme Court and the High Courts are all institutions created by the Constitution and whilst one has the right to criticise them one is also duty bound to respect them so that nothing that we say or do harms the institution proper.

Markandey Katju was a judge of the Supreme Court who, after retirement, was appointed the Chairman of the Press Council of India. Prior to this he had been Chief Justice of the Madras High Court. During his tenure a District and Sessions Judge from the Tamil Nadu Higher Judicial Service, Ashok Kumar, was recommended by the former Chief Justice of Madras High Court, the Governor of Tamil Nadu and the Chief Justice of India, with the advice of the collegium of judges, to be appointed as Additional Judge of the Supreme Court under Article 224. The tenure of such appointment should not exceed two years. Justice Markandey Katju is alleged to have reported to the Chief Justice of India that Ashok Kumar's integrity was in question and, therefore, this Additional Judge should not be confirmed as a permanent judge under Article 217. According to Justice Markandey Katju Justice R.C. Lahoti, Chief Justice of India had a confidential enquiry made into this allegation and having found substance in it, did not recommend the confirmation of Ashok Kumar. According to Justice Katju, M.Karunanidhi, Chief Minister of Tamil Nadu, to whom Ashok Kumar is stated to have been close, told the then Prime Minister, Manmohan Singh, that unless Ashok Kumar was confirmed in his post DMK would withdraw support and the UPA Government would fall. It is stated that Manmohan Singh panicked on this and directed the Law Minister, H.R. Bharadwaj, to speak to the Chief Justice of India for the continuation of Ashok Kumar. According to Justice Katju the Chief Justice of India, Justice R.C. Lahoti, succumbed to pressure and agreed to an extension of the term of Ashok Kumar. Subsequently Justice Lahoti's successor, Justice Sabharwal, also agreed to the extension of the term, whereas his successor, Justice Balakrishnan, recommended that Ashok Kumar be appointed a permanent judge, though he did transfer him from the Madras High Court to some other High Court. The situation today is that Ashok Kumar retired and subsequently died and, therefore, is no longer on the scene. Justice Katju himself moved up to the Supreme Court.

For ten years nothing happened and suddenly Justice Katju has resurrected the Ashok Kumar case, not through any correspondence with the Chief Justice of India or with government but by going public and that, too, in a very big way through the print and electronic media. He states that whereas he himself had objected to Ashok Kumar's extension, three successive Chief Justices of India succumbed to pressure, extended Ashok Kumar's term and ultimately confirmed him. This was all done under pressure from Manmohan Singh and H.R. Bharadwaj. That makes five niggers in the woodpile, Manmohan Singh, H.R. Bharadwaj and three former Chief Justices of India, Lahoti, Sabharwal and Balakrishnan. Who unearthed this evil five-some? Obviously that champion of truth, Markandey Katju. The silence of ten years is not explained nor the reticence on his part to speak till Manmohan Singh demitted office and the three Chief Justices in question retired. It is incidental that the judge in question himself has died. His case cannot be reopened, but at least Justice Katju, by exhuming his body, can conduct a postmortem which shows how rotten our body politic is and how worthless is our higher judiciary. Is this with an eye to reform? One doubts it. Is it to gain cheap publicity? One can state with certainty that this is so, especially because Markandey Katju's statements have come as manna from heaven specially directed towards the media, in particular Arnab Goswami of Times Now. What a lip smacking feast this makes, what avenues open up for shouting matches in a TV studio, much muck raking and mudslinging and what lovely publicity for Markandey Katju! The fact that it causes so much harm and pain to a former Prime Minister who is basically innocuous and to three former Chief Justices of India, what damage it causes to our Supreme Court and political institutions seems to be of no consequence to Markandey Katju. He has his day in court, he is mounted on a spirited charger leading an attack on corruption at the highest level, though the fact is that he is actually Don Quixote tilting at windmills across the Plains of La Mancha.

The media and a section of activist do-gooders campaigning for a change in the system of selection of judges of the High Court and the Supreme Court are having a field day. The cry is that at present it is only judges who decide who will be appointed as judges and that this makes the system excessively narrowly focused. Therefore, there is a demand for the setting up of a National Judicial Commission which, though headed by the Chief Justice of India, will also have the Law Minister and a couple of eminent jurists as members. The system at present under Article 124 of the Constitution is that the President appoints judges of the Supreme Court in consultation with such of the judges of the Supreme Court and High Courts as he deems fit, but invariably and statutorily in consultation with the Chief Justice of India. The Supreme Court has its own internal arrangement whereby the Chief Justice consults a Collegium of Judges before rendering advice to the President. Under Article 74 the President is bound to act on the aid and advice of the Council of Ministers, which means that the Executive does have a say in the appointment of judges, but the rider is that no appointment can be made without consulting the Chief Justice of India, which means that if a person is not recommended for appointment by the Chief Justice then the President cannot appoint him. The final say on the appointment of judges, therefore, effectively rests with the Chief Justice of India. Rather than detracting from judicial independence one would have thought that this arrangement actually strengthens judicial independence.

By contrast, in the United States of America, as per Article 2, section 2 of the US, Constitution the President appoints judges of the Supreme Court, but in consultation with and with the approval of the Senate. The Senate is a purely political body being the Upper House of the Legislature. The Chief Justice of the Supreme Court has no say constitutionally in the matter of appointment of judges, which is done by the head of the Executive, the President, with the approval of the Legislature. If such a system were to be introduced in India can one imagine the horse trading that would take place in the appointment of judges? The constitutional position in India does ensure that the Executive and Legislature are kept away from judicial appointments in that the Chief Justice and the Collegium of Judges have the most important role of all. In the ultimate analysis the Executive, through the President, has the final say, but only to the extent that the Chief Justice has recommended a name. This system must not be touched because any alternative, including a National Judicial Commission, will only politicise it.

India is a country in which we all seem to collectively and individually believe in constantly pressing the self-destruct button. From *Panchayat* to Parliament, from *chaprasi* to Chief Secretary, from the *Nyay*

*Panchayat* to the Supreme Court, from the ground level party worker up to the Prime Minister, from beggar to billionaire, from newspaper vendor to the owner of a huge print or electronic media network, we all the time gossip, unearth scandals, read wrongdoing into trivia and absolutely love destroying reputations, people, careers and institutions. Can there be a better definition of nihilism than this?

We seem to have changed over time and one remembers with fondness what Narsimha Rao as Prime Minister told Arjun Singh as Leader of the Opposition in Madhya Pradesh. Sunderlal Patwa of the BJP was the Chief Minister and the Congress had mounted a campaign to show that his government was neglecting the tribals, who were being forced into surviving by eating jungle fruits and roots. At a public meeting in Sarguja, then in M.P. and now in Chhattisgarh, the Opposition Congress Party leaders kept on condemning the government and highlighting what they called the miseries of the people. Narsimha Rao advised Arjun Singh that the world was watching and hearing what is being said and the picture painted was of a backward India in which people starved because government neglected them. Narsimha Rao asked whether Arjun Singh realised in what light this was showing India to the world and he told Arjun Singh that whereas criticism was legitimate, publicly running down the country is not permissible. In other words, he made an appeal for restrained criticism which could lead to improvement but not tell the world how rotten we were.

Does Markandey Katju realise what damage he has done by suddenly bursting out in this manner ten years after the event? The first is that he has alleged that the system of appointment of judges is rotten. This system produced three successive Chief Justices who, according to Justice Katju, did not deserve to occupy their posts. Then how come this very system selected that gem, that jewel, that purest ray serene, Markandey Katju, first as a High Court Judge and then a Supreme Court Judge? Were the appointments of Justice Lahoti, Sabharwal and Balakrishnan an aberration, or was it the appointment of Justice Katju? Would Justice Katju like to elucidate? The second harm that Justice Katju has done is to the office of the Prime Minister. This reminds one of the Bofors Case when V.P. Singh made allegations of corruption. One felt then that if V.P. Singh had evidence against Rajiv Gandhi he should produce it so that the matter could be investigated and if found to be substantially correct then Rajiv Gandhi should even be prosecuted. In Japan, when it was found that the Lockheed Corporation had paid a bribe to Prime Minister Tanaka, evidence was produced, the party suspended Tanaka, he resigned from office, he was tried and convicted and sentenced to three years imprisonment. The wrongdoer was singled out, removed from office and subsequently jailed, but the office and institution of the Prime Minister remained unharmed. In India nothing happened to the individual because no proof was produced, but there were such allegations of scandal that Rajiv Gandhi spent all the rest of his term in office in defending himself, government work suffered and not so much the individual as the institution of the Prime Minister stood in tatters. What did V.P. Singh achieve? Absolutely nothing, except that he did incalculable harm to the concept of government itself. Markandey Katju, in his own way, is the V.P. Singh of the Judiciary. He remained silent when he should have spoken out and he has not only spoken but continues to speak when he should be silent. In the process the credibility of the Prime Minister stands eroded because Justice Katju paints him as a person who came under pressure and, in order to save himself, panicked and tried to pressurise the Judiciary in the matter of appointment of a corrupt judge. The office of the Prime Minister stands weakened in the public eye, just as the office of the Chief Justice stands weakened as it is painted by Katju as being amenable to political pressure. In the process the institution of the Executive and Judiciary both stand severely damaged, not necessarily because they have done wrong but because Katju says so and our people are only too happy to lap up scandals and to believe the worst about all constitutional functionaries. This is nihilism at its worst and one is bound to presume that at heart Markandey Katju is a publicity hungry nihilist.

One recognises, appreciates and is grateful for the fundamental rights granted by the Constitution of India, especially Article 19 which gives freedom of speech and expression. However, not only is this freedom amenable to the discipline imposed by the proviso to Article 19, but it is further moderated by Part IVA of the Constitution which, in Article 51A, gives the fundamental duties of every citizen. A citizen, which includes Markandey Katju, is not only duty-bound to abide by the Constitution but he is also required to respect its ideals and institutions. The office of the Prime Minister, the Council of Ministers and the High Courts and the

Supreme Court are all institutions created by the Constitution and, therefore, they are entitled to respect. Criticism, especially constructive criticism, is not only permissible but is in fact desirable. Pressing the self destruct button which virtually destroys these institutions by innuendo is not permissible. To strive towards excellence in all spheres of individual and collective activity is mandated by Article 51A, but to try and attack every institution so that it never achieves excellence is a violation of one's fundamental duties. Does Justice Katju not realise that he has engendered disrespect for institutions and certainly not enhanced the search for excellence?

Justice Katju, as a former Supreme Court Judge, surely appreciates the fact that under our system of jurisprudence every fact alleged has to be proved through evidence. He alleges that Manmohan Singh panicked because Karunanidhi pressurised him. Was he present when this threat was given? Any other evidence in this behalf would be hearsay and under section 60 of the Indian Evidence Act hearsay evidence is not permissible. Would Justice Katju try and explain how he got evidence about the so called conversation between Karunanidhi and Manmohan Singh in which Karunanidhi threatened to withdraw support if government did not confirm Ashok Kumar? Justice Katju has further alleged that a shaken Manmohan gave directions to H.R. Bharadwaj, then Law Minister, to meet the Chief Justice of India, Justice R.C. Lahoti. From where has Justice Katju collected evidence about the state of mind of Manmohan Singh which indicated that he had panicked? Justice Katju has also alleged that Justice Lahoti, Sabharwal and Balakrishnan succumbed to pressure and passed orders favourable to Ashok Kumar. What evidence does Justice Katju have of three successive Chief Justices being such weaklings that they would be unable to resist any pressure from government? In the absence of credible evidence can one take Justice Katju's statement and allegations seriously? One is forced back to thinking that Justice Katju is, after all, the type of Indian who would make innuendos but never give proof, who has no hesitation to press the self-destruct button so that the very institutions he has served may sink in public esteem and that high functionaries exist only so that they may be disgraced by the likes of Markandey Katju. God saves the country.

One final word. We as a people have to come out of our present mood of distrust and the disgust with everything Indian. Our institutions rest on firm foundations. Do we have to undermine them? Can we not once again trust our Parliament to legislate, the Executive Government to govern wisely and firmly, our Judiciary to dispense fair, impartial justice? Must we smell corruption everywhere though it may not exist? Can we not leave the writing of what Mahatma Gandhi called "The gutter inspector's report" to Katharine Mayo? If India is to be great it must first learn to trust and have faith in itself, in its institutions, in those who man them and make them operational. Only from faith comes confidence and from confidence come great deeds.

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