

Judges Told To Mind Their Judgments

By BIPIN ADHIKARI

A recent judgment of two senior judges of the Supreme Court acquitting Gordon Williams Robinson, a British national, from the charge of drug trafficking committed nearly three years ago has been the subject of strict scrutiny of the Supreme Court legal practitioners.

Some lawyers think that the said decision of the Supreme Court raises questions, and that the order reversing the decision of the special court, which had convicted Robinson of trafficking illegal narcotics and sentenced him to 17 year prison term and the fine of one million rupees, is not substantiated. The written judgment on the allegedly 'controversial' case pointed out that there was no unquestionable and concrete evidence to prove the accusation against him. Justices Krishna Kumar Barma and Bali Ram Kumar acquitted Gordon, the alleged international drug trafficker, who was arrested on August 21, 2001 at the Tribhuvan International Airport (TIA) while trying to smuggle the illegal drug out to Indonesia via Singapore. Nepal Bar Association has already formed a committee to probe and study the judgment.

The need for judges to be seen to act fairly is very important in the administration of justice. Not only must justice be done, it must be seen to be done; and although judges are in fact acting and behaving fairly, if they don't appear to be acting fairly that is just not good enough.

While the controversy will definitely be settled after the review of the case and the Supreme Court decision, a sort of damage has already been done to the reputation of the Supreme Court by bringing the controversy before public without first being assured of the deterioration of judicial standards and fall in values. Some lawyers who think that the issue has been reported in the newspapers without giving serious thoughts on whether the allegation has truth, and whether the case should first have been submitted to another bench for revision, have already spoken about the irrelevance of the charge. They think that a court can always overrule its own earlier decision. In other words, nothing is final in judicial verdict. Although the decision in a specific case could be final, the decision per se cannot be regarded as final. It could always be altered, changed or chopped or interpreted differently in future cases.

Everybody is concerned about judicial integrity, but immature and baseless allegations only hurt the delicate concept of independence of judiciary, and the feeling of those who are its principal stakeholders.

A system of regular research on recent judgment of the Supreme Court is already due in Nepal. This will enable judges to have regular academic feedback on their works. In the United Kingdom, for example, judges have been issued recently with guidelines to encour-

age political correctness in court. Advice sent to all judges and magistrates in England and Wales, tackles misleading social stereotypes that have led to a high-profile judicial gaffes. Judges are told the term "coloured" should never be used, to avoid using the description "oriental" and to take care that "British" is not used as shorthand for white, English or Christian.

They are also advised to use the words "postal worker" instead of 'postman'. They should not use the expression "mentally handicapped", rather use expressions like "learning disabilities" and "people with disabilities." The book also says that reference to minority communities as "ethnics" is patronizing and should "certainly be avoided." Similarly, the question "are you married?" should be avoided because it is intrusive and irrelevant. According to new guidance to judges the phrase "asylum seeker" is now associated with people without a genuine claim to be refugees, and is almost pejorative. They are reminded that women "remain disadvantaged" in society. The guidance says that "the disadvantages women can suffer range from inadequate recognition of their

contribution to the home or society to an underestimation of the problems women face as a result of gender bias."

Senior judges in England and Wales as elsewhere have long been stereotyped as upper class, public-school educated, white male twits, easily blundering into causing offence. The updated handbook, published by the Judicial Studies Board, which trains judges how to judge, also has a section on religion which includes a pocket guide to the beliefs of the world's religions. And judges are advised not to overlook the use of gender-based, racist or "homophobic" stereotyping as an "evidential short cut". They are also warned against using words that imply an "evaluation" of the sexes, however subtle: for instance, "man and wife", "girl" (unless speaking of a child) and "businessmen". Referring to people from ethnic minorities as "ethnics" should "certainly be avoided" because it is patronizing.

Until 25 years ago, there was no formal mechanism for teaching the art of judge-craft in the UK - indeed, in the 1970s, some judges thought that training could be positively harmful. Things have changed quite a lot.

Eternal vigilance is the price of liberty. It is high time that the importance of review and research of court judgments be given necessary attention in Nepal, and judges have necessary academic inputs in their decision making. Only such a system can help build a strong judiciary as we have noted in the example of England and Wales. ■

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