

Majesty of the Judiciary

By V.R. Krishna Iyer

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The judiciary is the most sublime instrumentality in the country and I have served it for nearly a decade during the best part of my life. This article, written out of reverence for the judicature, has a benign intent meant to arrest its corruption and decline now creeping into its vitals.

David Pannick, in his delectable book *Judges*, wrote, "Judicial independence was not designed as, and should not be allowed to become, a shield for judicial misbehaviour or incompetence or a barrier to examination of complaints about injudicious conduct on apolitical criteria.

"That a man who has an arguable case that a judge has acted corruptly or maliciously to his detriment should have no cause of action against the judge is quite indefensible."

Quoting Judge Jerome Frank — a great author (*Courts on Trial*) — Pannick wrote, "Some politicians, and a few jurists, urge that it is unwise or even dangerous to tell the truth about the judiciary. Judge Jerome Frank of the US Court of Appeals sensibly explained that he had little patience with, or respect for, that suggestion. I am unable to conceive ... that, in a democracy, it can ever be unwise to acquaint the public with the truth about the workings of any branch of government. It is wholly undemocratic to treat the public as children who are unable to accept the inescapable shortcomings of man-made institutions... The best way to bring about the elimination of those shortcomings of our judicial system which are capable of being eliminated is to have all our citizens informed as to how that system now functions. It is a mistake, therefore, to try to establish and maintain, through ignorance, public esteem for our courts..."

Justice Jackson of the US Supreme Court once remarked, "We are not final because we are infallible. We are infallible because we are final." Judges are human, though they are ordinarily of high standards and rarely commit serious solecisms, fundamental flaws and grave goofs. Justly, therefore, even high bench pronouncements do desiderate decisional review and correctional reversal. So we must abandon the populist superstition about judicial supremacy or curial papacy. Judges are under the Constitution, not over it. It becomes necessary to make a thorough scrutiny of the robed brethren's moral, materialist and value-based opinions if they stultify established principles of justice and violate Constitutional vision.

Equally necessary is the need to scan the candidates for the selection of judges, especially because our country is poor, our swaraj is anti-colonial, our Republic is socialist, secular, democratic, humanist, pro-labour and pro-agrarian. Many "Lordships" hardly deserve the high office, since in their rulings they do not share the basic values of their oath, being under the illusion of irremovable office and aristocratic class bias. Luckily, learned,

humanist and morally exemplary judges maintain the majestic and high dignity of our courts, with the insolent, ignorant, corrupt and dubiously lazy, still being in a minority.

A more careful investigation into their appointments is necessary, tuned to the socialist, secular, democratic values of the Preamble. When beyond criticism, blanketed by curious "contempt law", arbitrary judges are apt to behave unbecomingly and delay writing judgments, and even fail to write rulings. Constant vigilance of court performance is fundamental. The elitist, oligarchic and delinquent brethren must be subjected to disciplinary action. Many of their Lordships have little concern for the spiritual-compassionate perspective of swaraj jurisprudence and poverty-oriented justice for which India struggled and gained freedom. To shape our basic structure according to Yankee yen, MNC values and "Westoxication" is a betrayal of our heritage, history and commitment to the developmental policy for the backward billions whose resources are being greedily privatised by billionaires, foreign and indigenous. With privatisation and globalisation, mega-corporations are competing for power, holding our wealth and bribing our executive. So it is obligatory that our rulers, executive, parliamentarian and judicative, are scanned sedulously so that they can uphold the interest of the masses and the suppressed. These criteria apply a fortiori to the judiciary in which power vests finally over the validity of the two other crucial instrumentalities. The judiciary, claiming counterfeit finality, with no one to question its constitutionality, usurps even executive roles and challenges legislative autonomy.

The judicature has a sublime status and commands the reverence of the people which is a great tribute to this national institution. Necessarily, judges have the highest duty to the people of administering justice, based on fearless truth, moral rectitude and negation of addiction to power and lucre. Austerity, never ostentation, is the essence of forensic parameters. Declaration of wealth and high code of conduct are binding principles. High education, professional ability, advanced technology and mega-factories and wealth belong to the rich and they control the country's resources, police power and incarceratory power. If this superior class manages to gain judicial power too, Indian law is likely to be interpreted and adjudicated in favour of the creamy layer and the robber sector. The weaker sector finds law to be its enemy if the instrument of law is in the hands of the higher class.

"There is no doubt that we are surrounded in our adult life with a wealth of humbugs: fame humbugs, wealth humbugs, patriotic humbugs, political humbugs, religious humbugs and humbug poets, humbug artists, humbug dictators and humbug psychologists," said Lin Yutang.

Prof. Griffith has observed in his book, "Judges are the product of a class and have the characteristics of that class. Typically coming from middle-class professional families, independent schools, Oxford or Cambridge, they spend 20 to 25 years in successful practice at the bar, mostly in London, earning very considerable incomes by the time they reach their 40s. This is not the stuff of which reformers are made, still less radicals."

Once Winston Churchill said in the Commons, "The courts hold justly a high, and I think, unequalled pre-eminence in the respect of the world in criminal cases, and in civil cases between man and man, no doubt, they deserve and command the respect and admiration of all classes of the community, but where class issues are involved, it is impossible to pretend that the courts command the same degree of general confidence. On the contrary, they do not, and a very large number of our population have been led to the opinion that they are, unconsciously, no doubt, biased."

As David Pannick wrote, "We need judges who are trained for the job, whose conduct can be freely criticised and is subject to investigation by a Judicial Performance Commission; judges who abandon wigs, gowns, and unnecessary linguistic legalisms; judges who welcome rather than shun publicity for their activities."

(Justice V.R. Krishna Iyer is a former judge of the Supreme Court)