

# Errant Judges and Secretive Collegium of the Supreme Court

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NETIZENS AND CITIZENS,

My last communication to you was on the eve of 61<sup>st</sup> Republic Day of our country and though I put up a brave front in claiming that I am an optimist, hoping to see changes for the better in the near future, I must confess that I have not been able to see any change for the better, but on the other hand, things have gone from bad to worse.

The manner of functioning of the collegium of the Supreme Court of India has drawn flak from all sections of society and it is a matter of utmost concern and even a matter of shame for the members of the judiciary that the collegium of the Supreme Court is blissfully remaining

insensitive to public opinion/reaction, but, is only playing GOD by not responding.

Well, in a democracy and that too in a democratic republic, that cannot be. People and citizens of this country are the ultimate masters and the governance, is always accountable to the people of this country. There cannot be any insensitivity or evasion from accountability on the part of the persons in authority and control, who govern our society under the scheme of the Constitution. State should always not only be responsible for and accountable to the citizens of this country, but also show awareness and response to their views, aspirations, woes and travails. If not, it is nothing but a failure on the part of the governance.

Judiciary being one organ of the State and as perceived during the present times, a pivotal organ amongst the three organs of the state and looked upon by the common people of the country as their saviour, as saviour of their hopes and aspirations and as the only organ in this country which cannot and should not fail, and such being the expectations and aspirations of the people of this country, it is very essential and also the constitutional duty for the Judiciary to fulfil this expectations of the people and perform in a proper manner.

Judiciary, being one organ of the state is as much accountable to the people of this country and courts being the institutions through which the judiciary is enabled to respond and redress the grievances of the citizens and the people, and judges being persons through whom courts function, courts and judges cannot remain insulated from public opinion nor can discard public needs and demands.

About fulfilling this expectations of the people, by playing its role correctly, there cannot be an exception in the case of the highest court of the country viz., the Supreme Court of India, and even the collegium of the Supreme Court, which is an administrative sub-committee of the judges of the Supreme Court, entrusted with the task of overseeing the selection and appointment of judges in the High Courts and the Supreme Court, and having been bestowed with a virtual veto power in the wake of self serving judgments of the Supreme Court rendered in the case of **SUPREME COURT ADVOCATES ON RECORD ASSOCIATION vs UNION OF INDIA (AIR 1994 SC 268)** [known as Second Judges case while **S P GUPTA vs. UNION OF INDIA (AIR 1982 SC 149)** is known as the first Judges case] and in the case of Special Reference No.1 of 1998 **[(1998) 7 SCC 739]** is no exception to this requirement.

The collegium of the Supreme Court being very secretive in its conduct and functioning in the matter of selection of judges of the High Court and the Supreme Court, such manner of functioning has also drawn flak and has invited very adverse criticism from all sections of society. More so from the legal community itself.

Laymen on the street, or elite and enlightened in their palaces, have all been critical of the manner of functioning of the collegiums in general and the collegium of the Supreme Court in particular!

The collegium of the Supreme Court refusing to divulge information has not been taken kindly by the members of the public and this conduct and attitude is looked down with suspicion and as a possible cover up resorted to on the part of the members of the collegiums.

The defence of collegiums, through the slender arguments of the matter being confidential and may not be conducive for the proper functioning and efficacy of the judicial system in the country, is not taken accepted/respected by the members of the public and is discarded.

The legal/technical defences called in aid by the collegiums to refuse to divulge information about the manner of appointment of judges, particularly in the case of recommendation that had been made by the collegium of the Supreme Court to appoint Justice P D Dinakaran, Chief Justice of High Court of Karnataka, as judge of the Supreme Court, has come in for very grave criticism and perhaps rightly so.

It is claimed that to maintain a good image and the reputation of the institution, it is necessary not to divulge information leading to the recommendation and appointment of judges in the superior courts.

While it may be true that to protect the image and the reputation of the institution, the cause of a few judges can be sacrificed, it is the other way now as practised by the collegium of the Supreme Court, particularly the collegium doggedly refusing to divulge information about the conduct of judges and their performance as perceived in the opinion of the collegium, which if revealed or divulged would damage the reputation of the institution and in fact while it is not so, on the other hand, it appears that the information is not being divulged or revealed, only to protect the concerned judges and even possibly to protect themselves, but at the cost of the image and reputation of the institution, as in

the eyes of the public by not revealing the information, it is the image and reputation of the institution that is suffering and definitely not the image and reputation of the concerned judges.

It must be remembered that the image and reputation of a person is a reflection of the person's conduct and behaviour as perceived by the members of public, whereas the image and reputation of an institution is entirely dependent on the making of persons who man and are part of the institution.

While the institution itself is nothing but a neutral mute spectator, which is neither good nor bad, and is a creature of the Constitution and the laws, what reputation the institution acquires over a period of time definitely depends on the manner of performance and the conduct of the members in the institution.

It is high time that the collegium of the Supreme Court realizes this harsh reality and starts acting in the interest of the institution and not in the interest of individual judges nor to protect their image and reputation and try to hide or cover up the bad image or the bad reputation of errant judges!

In this regard, I have taken a few steps, which, from the perception of the members of the public and even amongst a few of my

colleagues on the Bench and a few judges of other high courts, is considered to be an unusual bold step, it has only drawn flak from the members/judges of the Supreme Court. While such may be the reactions and responses and varied at that, I earnestly believe I am only doing this as part of my duty and not beyond.

I am sharing with the people of this country my views and as is sought to be translated into action through the letter that I have addressed to the Chief Justice of the High Court of Karnataka and my colleagues in the High Court of Karnataka. Copies of these letters are attached. Also attached is a copy of the address in Kannada language, which I made on the occasion of the release of second edition of the book – Constitution of India – in Kannada by a law teacher Tumkur Yedeyurappa, a lecturer in law at the Law College, Sagar, and being published by Prof Venkatagiri Gowda Samskruthika and Shaikshanika Parishath, Mysore and the release function being organized jointly by the said Parishath and Institute of Development Studies, Manasagangothri of the Mysore University.

With regards and my good wishes to you all.

By  
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