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**Dalit Voices**

## **Judiciary - Least Honest and Least Accountable**

Every humanbeing is product of a social structure in which he is born and brought up, so is the case with Indian Judges. Do they perform marriages, rituals, and other essential expressions of life outside caste and customs, barring a few ? How can we expect that they will behave completely differently from ordinary citizens ? A person who had not suffered poverty and hunger, how can he be expected to feel the pain of the have-nots ? Nearly a hundred years ago, US president Roosevelt said about the decisions of the courts on economic and social philosophy. "A judge's mind is not a mechanical legal slot machine. His judgment is influenced, at least unconsciously, by his likes and dislikes, prejudices and predilections, his entire philosophy of life in the atmosphere of ongoing social struggles in the country. The resultant bitterness can not leave the judge without being influenced in their judgment as to the right or wrong of the struggle. As members of the struggling communities, they are bound to be partisan, because they share the sentiments and prejudices of their communities." Our Judiciary too is manned by such people and hence there must be effective control to keep reminding them of their duties whenever they fall apart. Framers of the Indian Constitution took exceptional care to protect the Judiciary more than was required. It does not mean that Judiciary behaves like oligarchy. Judges now murmur that there is none between them and God during litigation and court proceedings.

The observation of a judge in the Best Bakery case reads "H. U. Mahida, judge, who acquitted all the 21 accused in the case has an answer, in fact several answers: the British policy of divide and rule, the emphasis on industrialization at the expense of villages, frustration among 'meritorious' people because of reservation." Is this so called learned judge not a by-product of our caste-ridden social system ? Can a dalit expect any justice from judges in respect of reservation, when they are so biased ? This learned judge was so biased that he went completely out of context. In 1996, Supreme Court held that there are three parties in any litigation, two of them are the litigants and the third one is the judge him/herself. If it appears that the litigants are hand in glove and are not assisting the court to reach a conclusion, then it becomes the duty of the judge to extract truth from witnesses. But in the case of Best Bakery, the judge has failed to discharge his accountability.

The Constitution is the mother, and Judiciary, Executive, and Legislature are its children. But judiciary has now defiled its mother by misinterpreting and diluting it in many ways. In 1981 in the 1st Judge case - S.P. Gupta Vs. Union of India (1991) Supreme Court held that opinion of the Chief Justice of India (CJI) does not hold primacy in appointment and transfer matters of judges, and constitutional functionaries like the President, PM, Governor, Ministry of Law, vide Article 217 of Indian Constitution, but must be consulted. In the 2nd Judge case SC Advocates on Record Association Vs. Union of India (1993), Supreme Court held that the Chief Justice of India holds primacy in transfer and posting of judges and the process of selection of judges of Supreme Court must be initiated by the CJI. This is complete departure from Constitutional provisions. In the case of a reference case (1998) it again confirmed the primacy of CJI. Unfortunately, there is no law to govern judiciary in this country. In the appointment of judges, no objective procedure can

be followed in the present situation, to judge the character, capacity, and ability of a judge. Sycophancy, nepotism and favoritism are the order of the day. Since plurality of hands like President, PM, Governor, Ministry of Law are not allowed to play a role in their appointment, appointment is therefore bound to be corrupt and biased. Who has given power to CJI to appoint judges ? Neither people nor Constitution of this country have given this power to him. How can they assume and snatch executive powers ? Earlier, Executive used to have a say in the appointment of judges, and that was more or less fair because the Executive is answerable to the people of the country. Where is the criteria of merit to select a judge gone ?

A dalit judge in Allahabad had to suffer from the behavior of his upper caste colleague Judge, Ashok Srivastav, who washed his chamber and furniture with Ganges water on June 3, 1997. When the matter was reported, the humiliated judge, Mr. B. Brashad, was reprimanded and was compulsorily retired. The District judge who shielded the erring judge was promoted to the High Court. A judge at Jaipur revealed his caste feelings in case of Bhanwari Devi. He said, "how can an upper-caste rape her ?" A High Court judge of Delhi compounded the sentence under Civil Procedure Code, when a matter came before him after sentence was conferred under Food and Adulteration Act by a lower court. Number of culprits went scot-free by just paying a few thousands of rupees, whereas they would have languished in jail for months and years. Can there be such lawlessness elsewhere, erring persons allowed to go scot-free ? Impossible .

A committee on the welfare of Scheduled Castes and Scheduled Tribes (1999-2000), comprising 30 Members of Parliament (MP) headed by Mr. Kariya Munda, presented a detailed second report to Lok Sabha on March 15, 2000, which was laid on the table of Rajya Sabha. This report was with special reference to appointment of SC/ST Judges in higher judiciary. The committee recommended that relevant Articles 124 and 127 of the Constitution may be amended suitably to include especially judiciary wing of the state within the ambit of reservation; simultaneously a Judiciary Act may be enacted to spell out the governing principles for proper functioning of the judiciary, High Courts and the Supreme Court.

The Committee further noted that at present, majority of High Courts have made provisions for reservation in services for SCs and STs under them by framing suitable rules of recruitment. However, no such rules have so far been made by Supreme Court. The whole attitude of Supreme Court is very surprising. Its Registry has intimated that the requisite information regarding representation of SCs and STs is not available with that office.

It is further noted there has not only been no reservation for SCs and STs in the appointment of Officers and staff of Supreme Court, but framing of codified rules regarding their recruitment has not been finalised during the last half century. How can weaker sections of the society repose any faith in such a Court ? The committee was, therefore, of the view that when Supreme Court is receiving salaries from the Consolidated Fund of India for its staff, it is a condition that the Chief Justice and companion judges of Supreme Court as well as High Courts should also implement reservation in recruitment and promotion of the officers and servants at various levels at the prescribed percentage, and backlog of vacancies in the categories of Scheduled Castes and Scheduled Tribes must be filled up by conducting special recruitment drives.

When the Committee wanted clarification on the uneven policy followed by various High Courts in regard to reservation in employment of SCs and STs, and whether this question was ever discussed at the Chief Justices' Conference held periodically, the Ministry of Law, Justice, and Company Affairs in their post-evidence reply stated that the agenda of the Conference is finalized by Supreme Court, and the Department of Justice has no role to play. They further stated that as

per information available with them, the question of reservation in employment of SCs/ STs in High Courts was not discussed in any of the Chief Justices' Conferences held in the last eight years. However, the information in this regard was not supplied by Supreme Court of India.

On enquiring about the figures of actual representation and percentage of SCs & STs in the total number of officers and staff separately for Subordinate Judicial Services, Higher Judicial Services, and Ministerial Service for each state, the Ministry of Law, Justice and Company Affairs in their post-evidence reply stated that primarily Subordinate Judicial Services and Higher Judicial Services are the concern of respective State Government and its High Court. The control of Ministerial service in the establishment of High Court is the exclusive domain of each High court. The information in respect of actual representation of SCs and STs in various High Courts' establishments is as under; Two High Courts, Allahabad and Delhi, have not furnished any information at all in this regard, which cannot be expected from these esteemed organizations. The Committee also observed that the representation of SC and ST employees in the establishment of various High Courts is deplorable. The Committee desired that full information relating to Officers, gradewise, servicewise, details in respect of employees of all High Courts, with break-up figures on SCs and STs therein, should be made available to the Committee at an early date.

The Committee noted that a proposal for setting up of National Judicial Commission was made by the Commissioner for Scheduled Castes and Scheduled Tribes more than a decade ago, which was also reiterated by the Law Commission of India in its 121st Report. The Committee regretted to note that the matter was still under examination by the Govt.. The Committee, therefore, strongly recommended that a National Judicial Commission including one member from Scheduled Castes and one member from Scheduled Tribes be set up early, to deal with the appointment, transfer and placement of judges of High courts and Supreme Court. This should be supplemented by constituting an All India Judicial Service.

The committee was surprised to find that out of 481 High Court judges only 15 SCs and 5 STs were in position as on May 1, 1998. As in the reports, it viewed that judges take oath to uphold the Constitution and Laws. But Supreme Court, and few High Courts are claiming power above the Constitution, practising untouchability, and are disobeying the Constitution in regard to Arts. 16(4) and 16(4A).

Recent incidents on behaviour of judges, no doubt, reflect leaving the system as it is, or else it would spoil whatever democratic values are left. One poor fellow judge, Mr. Sumit Mukherjee was jailed, because he was not enjoying immunity, and such characters are not few but must be in plenty. They hear those lawyers who have face value, tacit understanding, and of course, their relatives. Judges should not be posted in the places where their relatives are practising law. But examples in Delhi High Court put to rest all doubts, where 12 judges' relatives are practising. In Allahabad, there are 27 such judges. Thus, the present set up in judiciary is neither honest nor accountable. On behalf of the All India Confederation of SC/ST Organizations and Justice Party, I assure this august gathering that our movement is with this pious mission.

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