

Limits of judicial conduct V.R. Krishna Iyer

A Performance Commission to investigate delinquent judges is essential if egregious judicial blunders are to be minimised.

Judges have powers to guillotine people, to rob them of their entire riches, to grant divorces and disinherit children as being illegitimate. Such enormous powers they have, yet there is no authority to punish them if they exercise these powers in an authoritarian and arbitrary fashion.

Harlan F. Stone wrote in *United States v. Butler*: "... [W]hile unconstitutional exercise of power by the executive and legislative branches of the government is subject to judicial restraint, the only check upon our own exercise of power is our own sense of self-restraint." (297 U.S. 1, 78-79, 1936)

The great Felix Frankfurter justified the criticism of judges thus: "Judges as persons, or courts as institutions, are entitled to no greater immunity from criticism than other persons or institutions. Just because the holders of judicial office are identified with the interests of justice they may forget their common human frailties and fallibilities. There have sometimes been martinets upon the bench as there have also been pompous wielders of authority who have used the paraphernalia of power in support of what they called their dignity. Therefore judges must be kept mindful of their limitations and of their ultimate public responsibility by a vigorous stream of criticism expressed with candour, however blunt." (*Bridges v. California*, 314 U.S. 252, 289)

The judges of India's highest court consider themselves to be gifted with infallibility because of the finality of their judgments. This shall not be. Like other institutions they too must suffer when they go wrong or are negligent. A powerful Performance Commission to investigate the delinquencies of judges is essential if the number of instances of egregious judicial blunders is to be minimised. Rules of good conduct that were voluntarily created do exist. But they carry neither sanction nor penalty and are often violated, though yet rarely. If Parliament has enough vitality and sense of duty it must forthwith create a comprehensive code of judicial conduct for higher judges when state power is exercised by constitutional instrumentalities.

Transparency in functioning and accountability with respect to duties are fundamental in a democracy. Parliament is the ultimate inquest of the nation, and judges are no exception to this. If robes rob by corruption they must be subject and answerable to, like other constitutional agencies, the people through Parliament. They are no Niagara but great power canalised and controlled in their furious flow, ultimately to be beneficial to the nation. This process of social engineering is part of social philosophy which is structurally basic to legal engineering, so that justice, social, economic and political; human rights and fundamental duties laid down by the Founding Fathers (vide Parts III, IV and IV A) do not remain an illusion.

Corruption among judges, even sexual misconduct, is escalating. And there is no punitive therapy save the political futility of the impeachment pharmacopoeia. One method to arrest the evil of corruption, communalism and other dangerous deviances is to insist on transparency and accountability. Probity and integrity could thus be invigilated by a high-level committee comprising the nation's most respected souls acceptable to the President, the Cabinet and others. They should be free from politics, communalism and any dark shades in public life.

One controversial question concerns the common man's desire to know, in a socialist secular democratic Republic like India, about the assets, accumulations and the methodology of acquisition of wealth by judges. Judges have to declare their assets before the President, the

Chief Justice of India, the Comptroller and Auditor General of India... This information should be available to any responsible citizen or institution on reasonable grounds when it is demanded for legitimate purposes. This information should not be a secret that is hidden among the judges, for that could provoke suspicion. Suspicion is the upas tree under whose shade reason fails and justice dies. Judges, great in status and mighty in their majesty, should be, like Caesar's wife, above suspicion.

Yes, judges are the salt of the earth. If the salt loses its savour, wherewith shall they be salted? You have assumed office by an oath to uphold the socialist, secular, democratic Republic. If you breach this oath, the Performance Commission shall disrobe you and forfeit the Bench. Be you ever so high, the oath binds you.

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