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Politics and the performance of courts

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Judges have, and should have, their politics as in the case of other professionals.

The Bench is a lofty, sublime, sacred and hallowed place where every word uttered and every phrase articulated, should be dignified and solemn. So high is the court from where justice is delivered that it is considered next only to divinity and royalty. In this sense, the robed brethren as a class are a wonder in themselves.

This article does not refer to any particular judge or to any particular observation made in lighter vein. However, one judge observed recently with some passion that judges have neither politics nor philosophy, and act without politics. This is not entirely correct; perhaps it is wrong. Many judges claim they are above politics. This is absurd because they are a third instrumentality of the state and are governed by the politics of the Constitution. The art or science of government or governance is especially the governing of a political entity, such as a nation, and the administration and control of its internal and external affairs.

Many judges disclaim all politics and hold that they have no politics but only interpret and enforce the laws. They forget the fact that critics see through this hidden politics of the justices. It is on the pretext of interpretation that they cleverly, perhaps unwittingly, practise the politics of their class and defeat the social philosophy of the Constitution — to uphold which they have taken their oath of office.

What is politics? The Constitution has politics, and semantics is the spelling out of its politics. What they hide in linguistic semantics is their alleged innocence of politics. Professor Griffith of London University exposed the myth in his book *Politics of the Judiciary*. He quoted Churchill and Lord Scrutton.

This was from Churchill: “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.” (The Secretary of State for the Home Department (Mr. W.S. Churchill) on the second reading of the Trade Unions (No.2) Bill, 1911 (26 H.C. Deb. col. 1022).)

This was from Lord Justice Scrutton: “The habits you are trained in, the people with whom you mix, lead to your having a certain class of ideas of such a nature that, when you have to deal with other ideas, you do not give as sound and accurate judgments as you would wish. This is one of the great difficulties at present with Labour. Labour says ‘Where are your impartial Judges? They

all move in the same circle as the employers, and they are all educated and nursed in the same ideas as the employers. How can a labour man or a trade unionist get impartial justice?' It is very difficult sometimes to be sure that you have put yourself into a thoroughly impartial position between two disputants, one of your own class and one not of your class.”

Political philosophy

Judges must have a political philosophy. A political critique will reveal their political perspective. Our socialist, secular, democratic republic must appoint only judges who share the political philosophy of the Constitution, since judges are under the Constitution, not above it. When a case concerning reservation in favour of the backward classes was quashed by the Supreme Court, Jawaharlal Nehru critically observed that the highest court was no third chamber of the House.

We all belong to a class conditioned by our nation, economic environment, social status and the like. If a millionaire tells a slum-dweller he has no politics, do you believe him? Likewise, if a trade union leader asserts to his industrial employer that he has no politics, it is baloney. To have political views and beliefs is not a form of guilt. To hide it is guilt. If you take an oath before taking office to uphold the Constitution, you are declaring your socialist, secular, democratic politics.

Let us be frank. Judges have their politics as in the case of other professionals. The nation's politics is reflected in the Constitution. Let us not define ourselves and others by a claim of 'no politics.'

When judges, like Ministers, have fabulous salaries and fantastic perks, that is politics of the moneyed class. Those who belong to Class IV, the lowest level of government service, have their own politics.

My judgments as a Judge of the Supreme Court, I should confess, had politics in them. A corrupt judge will have 'make-money politics.' If you run an industry exploiting your workers, that is politics. Independence of the judiciary is not 'no politics', but the fearless and impartial philosophy of the Constitution that you have taken an oath to uphold. You are a trustee. All public power is a trust. So is judicial power. The people are the beneficiaries. Your commitment to democracy is oath-bound. You cannot shirk it.

Socialist dimension

Democracy in its economic dimension is socialist. Our Constitution, which you are bound to uphold, is expressly socialist and secular. So you have a socialist commitment. If you disown it, you violate your oath, and must go. Secularism transcends religion. So you cannot be communal. If you are casteist, communal or sectarian, you forfeit your office. The judicial process is above class, caste and community. Be firm on this. You may be Hindu, Muslim or Christian, but functionally you are above religion.

This is what Felix Frankfurter had to say: “A judge should be compounded of the faculties that are demanded of the historian and the philosopher and the prophet. The last demand upon him — to make some forecast of the consequences of his action — is perhaps the heaviest. To pierce the curtain of the future, to give shape and visage to mysteries still in the womb of time, is the gift of the imagination. It requires poetic sensibilities with which judges are rarely endowed and which their education does not normally develop. These judges must have something of the creative artist in them; they must have antennae registering feeling and judgment beyond logical, let alone

quantitative, proof.”

I would add the wisdom of Justice Black: “Judges are not essentially different from other government officials. Fortunately they remain human even after assuming their judicial duties. Like all the rest of mankind they may be affected from time to time by pride and passion, by pettiness and bruised feelings, by improper understanding or by excessive zeal.”

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