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## **Judges are public servants, not bosses**

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*Contrary to what the Chief Justice of the Supreme Court recently said, the Right to Information Act does cover 'constitutional authorities.'*

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Absolute power and egregious error will be totally incompatible, even when the matter involves the judiciary. Justices of the court are no higher than great Homer who, as Lord Byron put it, sometimes nods off. The 'robed brethren' on the High Bench do sometimes blink.

Perhaps it is a rare occurrence, but this is what happened when the Chief Justice of India, the country's highest judicial functionary, claimed that the Chief Justice is not a 'public servant' but a 'constitutional authority.' It may be true. But every judge is oath-bound to dispense public justice "without fear or favour, affection or ill-will." Public justice is public service, and obviously judges are public servants. The Right to Information Act, therefore, does cover 'constitutional authorities', contrary to what the Chief Justice said. His absolutist obiter, coming as it does from a legal luminary for whom I have high regard, is bizarre and it is a faux pas. Unfortunately, he has, in my legal perception, slipped into an accidental innocence of jurisprudence.

This may, however, be justly overlooked, having regard to the heavy burden he bears. He has to manage the court, handle a load of judicial work, frequently make ceremonial journeys, give erudite speeches and interviews, and bear the tremendous strain involved in selecting higher judicial personnel. Under public pressure or out of vanity, judges often undertake a tremendous amount of non-judicial work, sacrificing valuable time so necessary to study dockets, hear prolix and logomachic arguments, and write (although some of them do not do that) judgments laying down the law of the land. Considering this onerous background, we must forsake criticism of occasional forensic failings.

## **Grave goof-up**

How else can one explain a grave goof-up, made unwittingly, in his saying that judges are not public servants but ‘constitutional authorities’? The latter are, in simple semantics, a higher category of public functionaries. They are a finer, nobler group of public servants, democratically more accountable and qualitatively more liable than others to furnish information to the people about themselves and their functions, if it is relevant to the public interest.

All important constitutional authorities, such as Judges, Ministers, the Comptroller and Auditor General, the Accountant General, the Election Commissioner, and the Speaker of the Legislature, are a fortiori public servants with superior and more profound obligations. These are not two antithetical categories but are, in public law, of the same class. My candid constitutional camera perceives both as owing public duties and being liable to pay penalties for any failures — subject to the limitations laid down by law.

The great judge Jerome Frank, in his book *Courts on Trial*, said he had little patience with, or respect for, the view that it is dangerous to tell the public unpalatable truths about the judiciary. He wrote: “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.”

## **Democratic instrumentality**

I stand solidly for a judiciary that is a democratic instrumentality, not an occult class of divinity. David Pannick, QC, observed: “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.”

Information about judges’ wealth, other activities and even private doings, if they affect judicial duties, cannot be kept secret. To cite David Pannick again: “The judiciary is not the ‘least dangerous branch’ of government... They send people to prison and decide the scope and application of all manner of rights and duties with important consequences for individuals and for society. Because the judiciary has such a central role in the government of society, we should (in the words of Justice Oliver Wendell Holmes), wash... with cynical acid this aspect of public life. Unless and until we treat judges as fallible human beings whose official conduct is subject to the same critical analysis as that of other organs of government, judges will remain members of a priesthood who have great powers over the rest of the community, but who are otherwise isolated from them and misunderstood by them, to their mutual disadvantage.”

Let us not confuse between the papacy and the judiciary.

Judges, like Ministers, Governors, Presidents, Speakers and a host of other functionaries, are constitutional authorities. And, most emphatically, they are public servants, not absolutist bosses with vast political power but above democratic accountability. They should have functional transparency and be fundamentally incorruptible.

Indeed, judges must be free from graft, nepotism, abuse of power, and arrogance. They should be the paradigm of clean personal life, open and accessible custodians of public justice and paragons of moral excellence and humanist simplicity, sans consumerist craving and greed to grab. They are a higher cadre with a more sublime calibre.

### **Trustees of judicial power**

In short, justices wear robes on oath under the Constitution as trustees par excellence of judicial power, of course within their legal jurisdiction and constitutional jurisprudence. The Supreme Court, in a ruling of the Constitution Bench in *K. Veeraswami vs. Union of India* (1991 SCC P-655), held that the expression 'public servant', used in the Prevention of Corruption Act, is undoubtedly wide enough to denote every judge, including judges of the High Court and the Supreme Court. Judges are under the law, not above it. Your public life, and even private life to the extent it influences your judicial role, should be accountable and transparent to the public. A plea of secrecy is sinister allergy. Democracy is a disaster if the President, the Speaker, the Prime Minister and the Chief Justice hide their wealth and dealings from the scrutiny of 'We, the People of India', the sovereign of the nation.

To err is human and to forgive is divine. Chief Justice K.G. Balakrishnan is a fine citizen, a sublime soul, a versatile jurist, a graceful instance of dignity and refinement. If I have erred in disagreeing with his disclaimer of judges being public servants, he will forgive me. But judges certainly are not divine.

The Indian judiciary must accept Frankfurter, that frank and superlative U.S. Judge who wrote: "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 candor however blunt."

Our judges shall remain awake and alert and accept the Preamble to the Constitution that makes clear that this republic is 'socialist, secular, democratic.'

We meanwhile need a judicial appointments and performance commission of supreme stature, its members selected from among the highest judicial, political and public-spirited wonders of popular confidence.

This is essential to ensure that the finest and most independent members of the fraternity would exercise judicial power, and that they would be held in the highest esteem by the enlightened wisdom of the people of India. This desideratum demands a diamond-hard constitutional code that covers every dimension of judicial performance.