

Date:19/02/2009 URL:**<http://www.thehindu.com/2009/02/19/stories/2009021954661000.htm>**

[Back](#)[Opinion](#) - [Leader Page Articles](#)

Needed, transparency and accountability

V.R. Krishna Iyer

The judiciary is no materialist trade union that looks for escalating privileges.

If the Indian judicature is not to degenerate into a jejune institutional caricature, democracy must assert itself, and it must cease to be a simulacrum of Westminster judges with judicial wigs, jackets and robed apparel. The truth about the robed brethren must be an open book.

Judge Jerome Frank wrote: "In a democracy, it can never 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."

Let no dubious doctrine be invented to bribe the Bench into immunised corruption. Courts should be clean, run on the basis of a straight, transparent and accountable code of conduct with the aid of a performance commission with punitive powers. If even one corrupt judge pollutes the glory of the great tribe, expel him. Otherwise, through incremental trade unionism which is anathema to justice as a value, justices as a profession and justicing as a process will ruin the noblest brethren. That will spell the collapse of our culture and ethos and of the rule of law.

The grandeur of the Indian judiciary has been marred by an enigmatic factor. The trade unionist feature of capturing management power through collective pressure is manifest in this. The process is innocent but in my view constitutionally unwarranted. I refer to the collegium phenomenon based on the pronouncement of a nine-Judge Bench (1998 7 SCC 739) which held, by a majority of one, that the independence of the judiciary demands that the selection of judges of the higher courts be made the monopoly of a batch of three senior-most judges.

The executive power to appoint judges is wrested from the Cabinet and exercised by the collegium. This is a novel conquest, unique in any democracy. The selection of judges is an expert job, but judges, senior or junior, are untrained and without investigative tools and unfit for this non-judicial technical operation. Never appoint a judge who is without socialist-secular-democratic burning convictions and who is not free from class bias.

When the Executive and the Legislature act beyond their constitutional boundaries, the judges correct them. But when judges themselves go aberrant they must be restrained punitively by a constitutional code of conduct that is enforceable by a special instrument with special jurisdiction and jurisprudence and clear guidelines.

Where is the evidence, some may ask, of the hallowed judiciary being hijacked to pursue trade union strategy? Here are some instances:

Judges work only for 180 days in the Supreme Court and 210 days in the High Courts. The pendency of cases is mounting and dilatory tactics and leisurely disposals aggravate the arrears. But the courts do not care to abolish the practice of long vacations or cut down on lengthy travels. Of course, there are some egalitarian judges who are willing to hear cases even on Sundays or at late hours.

Some judges laze leisurely and take days to hear a case. And they grant easy adjournments where another hour or two would have been sufficient to decide the case. Procrastination and precipitancy are unbecoming of judges. Indolence and garrulous extravagance on the Bench is not unusual. Arrogance and ignorance cannot but be criticised. But there is no disciplinary guidelines or supervisory vigilance over dawdling judicialese.

Where instant hearings and prompt disposals are possible for diligent judges, performance is perfunctory, judgments are delayed by days, months and years, or there may not even be a judgment. There is no punitive performance audit or social accountability. How does one expect the executive, which is directed to dispose of representations within a prescribed time-frame, to do so when judges themselves do not work within the time?

There is no punitive jurisdiction or alternative instruments of enquiry. No judgments being delivered points to an alarming failure, yet such judges get promotions or are elevated to the highest court. The collegium would often seem to have no conscience or not done any investigation before an appointment is made. The selection process is kept secret from the Bar, the legislature and the people. Judges of the Supreme Court also share, though rarely, these failings because there is no code of conduct or a performance commission with penal jurisprudence and jurisdiction.

Some judges would seem to have no behavioural propriety and so many courts suffer from functional anarchy. Still they are final and by fiction infallible.

Judges demand immunity and secrecy beyond the law and above other citizens, sheltered by a bizarre iron curtain from revelation or disclosure. To gag all expressions of disapproval of judicial delinquency is to guillotine free speech, which is a fundamental right.

In our greedy age, culture has become commercial and some judges, in a display of high power, demand a dramatic escalation of remuneration even as labour demands for more wages are pending, the economy is sick and many people face unemployment. Remember, India has a large population of have-nots, and plural deprivation of human rights.

These facts constitute corrupt conduct, which leaves them disqualified from administering

socialist justice in a democratic Republic.

The infinite fact remains that many judges have lost their conscience because of a curious sense of independence without accountability. These two values go together and trade union tactics will not salvage them. The quality of justicing has to change and a social philosophy which involves streamlining procedures and cutting down on the number of appeals needs to be enforced.

The judicature is too great a public instrument to sink to the level of a caricature because one or two myopic Chief Justices seek to hide from public vision. When I stayed or declined an absolute stay of Indira Gandhi's election as MP, I never surrendered to fear or favour but performed my public duty and survived executive indignation although a great calamity in the form of the Emergency which eclipsed all human rights and judicial independence followed my order, which was reversed by a larger three-member Bench.

To sum up, the court is not a covert coward but an eloquently open and fearlessly frank institution. Secrecy is incompatible with the judiciary; otherwise our democracy will become a travesty and the have-not humanity will face authoritarian governance by a proprietariat oligarchy. This shall not be, for our Republic is people's power. Having spent well over seven years of the best part of my life in the Supreme Court of India, I must resist every tendency which reduces the confidence of the Indian people in the Indian judiciary which still has a high place in our society.

Justicing should uphold justice, social, economic and political. It is not multi-tired big business or macro-commercialism. It is a great trust of the people as their dearest right to every man, woman and child of India, that is Bharat.

© Copyright 2000 - 2008 The Hindu