

SECRECY OF THE JUDICIARY IS A TRAVESTY OF DEMOCRACY

Beware of the embryonic incarnation of a 'robed' trade union being born with a material tendency springing from the insatiable addiction to 'West is best' craze. The curial Robe, traditionally worn on the Bench by the British 'brethren', is a noble symbol of a learned profession with royal authority—the glorious judiciary. This august apparel has enjoyed the constitutional halo in 'Colonial India' of Judge Power, and enchanting popular esteem vis a vis the lofty status and stature of an 'independent' authority—all because this elite instrumentality consists of a select fine fraternity endowed with vast regal powers and enjoys, as a 'lordly' community, a sublime reputation and confidence, fair and rare, fearless and far aloof as a glowing oligarchy. This glorious group is expected to be incorruptibly above purchase, pollution or pleasure from any quarter, executive or other. Never departing from their sacred commitment to unadulterated administration of justice, this hallowed sector functions, superlatively from the floor trial level to a spiral up-to apex national deck. ever transparent and impartial between citizens, high and humble, free from pride or prejudice, arrogance, arbitrariness or authoritarian hauteur but acting with socialist egalite and secular sensitivity in strict compliance with the Constitution and the laws. The judicature is

geared to the grant of relief and imposition of penalty with forward functional simplicity, behavioural dignity, decency, decorum and democratic accountability in conduct public or private. Judges are judges on or off the Bench. Do you know Justice Douglas issued an interim writ stopping Vietnam bombing from his home? Why no American shall die nor kill by aggression without Congress sanction? Fiat Justitia, in this grand semantic humanism, is too hallowed a temple of social service which deserves to be honoured nationally and commands high patriotic honour, on and off the Bench. The first priority on a judge's agenda is his status as national fiduciary with constitutional obligations. This is hard to practice, but is a must in observance. Never depart from this lofty standard and don't taint the hallowed judiciary from this superlative, straight-forward lifestyle of moral majesty. How gracious and glorious is this great judicial profession! But this credential grandeur is forfeited if judges jettison the public values which are integral to the robe. Never rob it of its valiant virtues until you retire from office and even as a retired judge don't stultify the splendid fraternity to which you belonged and hunger for lucre. Never bid farewell to your Past. Every public servant who wields power over another, inarticulately but inexorably, subjects himself to this severe conditionality. Why? because all power is a trust which springs from the people and is accountable to the people in

a Democratic Republic. This is a fortiori applicable to the judiciary for the obvious reason that higher the power, graver the responsibility to Indian humanity. The jurisprudence of power makes no exception in favour of the 'robed brethren'. Late Justice Douglas, a great American judge, observed in general terms what we, in India, may apply to those who operate judicial power and myopically seek and make themselves an exception. "...all power tends to develop into a government in itself. Power that controls the economy should be in the hands of elected representatives of the people, not in the hands of an industrial oligarchy. Industrial power should be decentralized. It should be scattered into many hands so that the fortunes of the people will not be dependent on the whim or caprice, the political prejudices, the emotional stability of a few self-appointed men. The fact that they are not vicious men but respectable and social-minded is irrelevant." Emphatically, this basic ethos with a people-orientation must govern the court's power engineers. In this context, the remarkable book 'The Brethren', a daring, veracious U.S. publication, may be read profitably. It is amazing that so many unhappy but authentic secrets about the Apex Judges of the Washington—inmates of the marble marvel—are disclosed. The radiant robes of the Bhagwandas road in Delhi must submit themselves to public scrutiny. Yes, if you want to hide be you ever so high, better be out. Our judges need to be clean. Like those of

the USA who have been revealed without hesitation. No jurist or court thought of contempt action against the author. Chief Justice Warren Burger quoted in the book, is apt here. "In a country like ours, no public institution, or the people who operate it, can be above debate". A few Indian judicial cowards, with a pusillanimous community complex, may not agree. Have courage or surrender your robe! Remember, a judge is not a cloistered virtue but a public functionary whose activities are above board, open to democratic visibility, amenable to responsible invigilation. 'Contempt for a question prior to investigation prevents all progress and keeps man in eternal ignorance'(Herbert Spencer – Quote It-II p.95).

Under our Constitution, freedom of expression is a fundamental right. Free speech, reasonable and responsible, necessarily involves free access to information which is the basis of fair expression. Therefore, when public conduct or private asset or other feature affecting societal affairs, of a public servant, including a judicial officer, high or low, is involved and forms the subject of expression, the right to information, which is basic to expression, itself integral to the fundamental right, guaranteed in Article 19, of free speech. Corruption is almost ubiquitous; so too women-related vices. These can be extirpated only by exposure. Accumulation of disproportionate wealth, erotic escapades and other covert freebooting operations and

even sex excess, can and must be brought to light even in the case of judges and ministers and secretaries and this can be done only if these materials are not hidden but are, as of right, made available to responsible social activists, not of course, to frivolous or reckless busybodies. Broad secrecy is the hidden enemy of people's right to know. It follows that 'the right to know' which vests in every Indian citizen vis a vis public servants cannot be nullified by any jejune mask of judicial office. There exists no iron curtain under Indian jurisprudence between a person's search for information about the assets and another's is dubious behaviour. Bribery, graft and myriad malignant and miscellaneous misbehaviours and aberrations are growing in our country with rapidity and this grave escalation has made no exception in the case of one who wears a robe as a judicial official or as a religious functionary. The robe can never rob truth and justice nor screen from view roguery and rascality from the solar light of public interest scrutiny. Indeed, the Freedom of Information Act (FOI Act) did not create the Right to Information for the first time. That right existed under the Constitution and even under the law governing fiduciary functionaries and others with similar powers and responsibilities. Democracy is people's vicarious right of governance which obligates power-wielders to act publicly. The Freedom of Information Act created a viable machinery for easier enforcement of

the right to know. The irresistible conclusion is that the judges, executive echelons and all those who exercise public power are above the plea of secrecy and under a duty to disclose. 'Satyameva jayate' is our non-negotiable logo and paramount mandate of public power. India, true to constitutional rectitude, can be clean only when public official's purses, bank balances and other forms of property are an open book. If judges can be secret and safe pickpockets and immune to disclosure, our justice system will suffer the pathology of unearned wealth, covert bribery, illicit accumulations and abundance of benami estates, with no therapy of truth to cure this versatile rape syndrome. If the law blinks at the duty to unfold a public officer's financial balloon, the rule of law collapses in its battle against plundering mafia. This shall not be. Justice, social, economic and political, become brash and vain verbiage if judges, oath-bound, defeat the suprema lex. The moment the President of India, the Prime Minister of India, the Chief Justice of India, the CAG of India and the top echelons of the Defence Forces and different departments and the vast spiral of bureaucrats gain the legal right to secrete illicit wealth and myriad misconduct from public know-how with valid immunity, the law of the barbarian, the law of the jungle takes over and democracy dwindles and value-viable jurisprudence reaches vanishing point or low nadir. Such a national casualty we shall overcome. Yes, we can. A self-created secrecy, as a

professional privilege, even if expounded rashly by the high judiciary, smacks of bizarre trade unionism. This exclusion from freedom of information is violative of the majestic reputation of sterling constitutional guarantor of human rights. Judges are humans and not angels. Failings and temptations are not alien to their cadres. In the classic phrases of Justice Black of the U.S Supreme Court in *Green vs. United States* (356 U.S 165 198): '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'.(Quote It-I p.299)

Listen to Justice Frankfurter: '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'.(Quote It-I p.286/287)

Judges occupy a high pedestal in public life. Their conduct has to maintain a high standard of excellence as implied in the Constitution itself. The behavioural optimum of the 'brethren' (why, sisters too), has been the subject of national discussion. Our judges themselves, at the Supreme Court and High Court levels, ultimately in 1997 arrived at a unanimous code, brief but precise, which was accepted on the administrative side by the Chief Justices of the High Courts and by the judges of the Supreme Court. This includes the obligation of judges to present to the Chief Justice of India a statement of their assets. Such a revelation is not for fun or joke or an idle paper tiger or for the meditation of fleeting Chief Justices of India. It is a fulfillment of the onus celestial to communicate to the socialist people of India the assets of judges. The code of conduct, in my view, may be made part of the Constitution as a schedule called the Code of Behaviour of the Judges of Higher Courts. It is a happy omen that the former Chief Justice Verma insists that the assets of the judges, although confidentially kept by the Chief Justice of India, is public information under the FOI Act available to all social activists or solemn persons responsibly in search of the conduct and delinquencies of judicial personnel. So be it. Secrecy leads to suspicion. The great agnostic

and celebrated lawyer of the United States, Robert Ingersoll, once observed: 'Suspicion is the Upas tree under whose shade reason fails and justice dies. Let us place our judges, like Caesar's wife, above suspicion'.

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