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The Judiciary & Us

Who should serve as judges? What are the essential ethical and character qualities to be deemed essential in one selected to serve as a judge? Should a lawyer be promoted to the Bench just because he is legally erudite and experienced in court-craft? Should extraneous considerations and political interference be allowed to dilute the integrity of the selection process? At least a small dose of realism is necessary to think right on this issue.

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More judges seem to assume that their 'authority' stems from 'VVIP' status.
(Representational Image: iStock)

Some events are like seasonal changes. Some are like rashes on the skin.

The first are routine. They come and go, like one set of judges followed by another through retirement and new appointments. The second are symptomatic. They call for reflection and remedial action. The tremor induced to the Supreme Court of India, through the allegations against the Chief Justice of India, belong to the second category. To reckon the extreme gravity of the situation, consider the title, "the Chief Justice of India".

He is not merely the chief of the Supreme Court. He is the symbolic fountainhead of justice, "of India". Who he is, what manner of person he is, how he fares in the office, and what happens to him are all matters of national importance. Any conspiracy against him is a conspiracy against all of us. And, at the same time, any lapse on his part is also a betrayal of all of us. We have been anxious, over a period of time, that all is not well with the judiciary.

The memory of the unprecedented press conference by four of the most senior judges of the Supreme Court alerting the country that the institution is being compromised, purportedly by how the then CJI was handling his responsibilities, is still fresh with us. The alleged conspiracy in the present instance to 'de-activate' the office of the CJI by certain agents and interests who are resentful of his inflexibility, imparts a further vicious twist to our apprehension.

If the 'conspiracy' theory holds water, Justice Ranjan Gogoi did not commit any impropriety by speaking out as he did in this case. He did so, going by my tentative reading of the situation, not as the accused, but as the Chief Justice of India who deemed it necessary to speak out, given the larger ramifications of the matter. He did the unforgivable, if it is no more than a sexual harassment matter, in which he is the accused.

This is not the first time that a judge has come under the cloud of alleged misconduct. Apprehensions about the ethical standards of individual judges dithering, the increasing vulnerability of judges to influence ~ forum-hunting by lawyers being one of its symptoms ~, the judiciary- executive interplay, the long reach of the almighty corporates beyond judicial barricades... all these have undermined the credibility of the judiciary.

It is disappointing that no attempt to face this reality and to stem the rot has been undertaken so far. This is grossly irresponsible. The foremost issue emerging from this murky scenario is the appointment of judges at all levels. Take a comparable scenario. Teachers are expected to help mould the character of students. Yet, in the selection of teachers, the 'character' of prospective teachers is not even considered casually. All that matters are their academic records and, in many cases, the willingness to bribe the functionaries involved.

It wouldn't make a wee-bit of difference if an applicant had a trackrecord of cheating in the examinations. The character of students is expected to be well-formed under the tutelage of such gurus. Who should serve as judges? What are the essential ethical and character qualities to be deemed essential in one selected to serve as a judge? Should a lawyer be promoted to the Bench just because he is legally erudite and experienced in court-craft? Should extraneous considerations and political interference be allowed to dilute the integrity of the selection process?

At least a small dose of realism is necessary to think right on this issue. Admittedly, ethical standards are wilting in our society. There was a time when instances of corruption shocked, at least embarrassed, the people. Today they are passé. Sexual misconduct and sex-related crimes are proliferating. The quest for pleasure has attained tacit legitimacy. Unscrupulousness in the pursuit of selfish individual goals is largely tolerated. Judges are human beings. It is unrealistic to expect them to remain insulated from social trends and cultural assumptions, without equipping them to resist and transcend them.

Dignity is the hallmark of the legal profession. The essence of dignity is the character strength, as Gandhiji said, to resist and rise above unethical patterns and

attitudes. Judges need to ask: “Do we derive our authority entirely from the institution we represent? Or should we not also complement that authority with our personal stature comprising competence and integrity? Do we impart credibility, gravity and authenticity to the judiciary? How can judges continue to derive gravitas from the institution of judiciary, if they don’t continually invigorate it with their personal and professional stature?”

Wouldn’t the eagerness to protect the independence and inviolability of the judiciary seem unconvincing and defensive, if it is not matched by an authentic eagerness on the part of judges at the higher levels of the judiciary to uphold its majesty? If the impression gathers ground in public perception that the judiciary is pro-establishment and pro-status-quoist, and that it has a soft corner for the socio-economic elite, how can this antidemocratic streak endear itself to “We, the people...”? The least we must do is to talk openly about these issues. Judges need to accept that they are accountable to the people of India. The independence of the judiciary should not be mistaken for its exemption from accountability.

Judiciary is an institution set within a framework of democracy and the conduct of judges must harmonize with it. None is above accountability and transparency. As an English ethicist said, “I am a man honest enough to want to buy a railway ticket; but it is the certainty of a ticket collector at the end of the journey that actually makes me buy the ticket.”

As of now, there is no ‘ticket collector at the end of the journey’ for judges. Judges cannot afford for themselves the luxury of excuses. If corruption and venality are rampant in the society, they should not be deemed mitigating factors for the exalted norms of judicial propriety, but as realities that call for exemplary scrupulous behaviour and self-discipline. Today, nothing remains hidden from the sight of citizens. Lapses in public and professional conduct are dissected in household discussions around the country.

The lack of austerity and asceticism in the lifestyle and public profile of judges needs to be reckoned. Lifestyle is a major determinant in character- strength. A person accustomed to an opulent, even easygoing lifestyle is apt to be more vulnerable than one who leads a simple, ascetic lifestyle, to temptations and coercions. More judges seem to assume that their ‘authority’ stems from ‘VVIP’ status.

In the Indian spiritual understanding of authority, one who masters himself is greater than one who is master over others. None deficient in self-mastery commands respect or authority. I look forward to our judges showing the courage and character- strength to differ from the cultural and consumerist trends of our times and proving themselves impregnable to the cravings and weaknesses that ordinary flesh is heir to.

But this will not happen automatically. It needs to be worked at. The issues highlighted by the present crisis need to be encountered and remedial measures put in place, if the majesty of law is to remain more than a mere turn of speech, or a shield to ward off public resentment.

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