



Someone must be trusted, let it be the judges

By
Mahmood Abdul Ghani

Lord Denning M.L. the Twentieth Century British Judge and Jurist in his famous book "The Family Story" has remarked: "Every judge on his appointment discards all politics and all prejudice. You need have no fear. The judges of England have always in the past - and will - be vigilant in guarding our freedoms. Someone must be trusted. Let it be the judges."

The principle duty of a Judge, especially of the apex court and High Court is to suppress force and fraud. Force is more pernicious when it is open and fraud when it is closed and distinguished. Today judges are depositaries of laws, the living oracles who are expected, bound by an Oath to defend the Constitution, to decide according to law. Judges, like Caesar's wife are above suspicion. No doubt Judges are but men. Yet judges presently apparently are too inclined to fold their hands and blame the legislature.

It is high time they set to work and give the words, even of the Constitution, a rational workable meaning, even if this involves a departure from the letter of them. In so doing, they are more likely to find the truth. Today Judges are faced with hard cases, and we all know where hard cases can take a Judge.

Today a Judge hears the arguments and puts a brave face on the matter, press conferences apart, and since he has to decide, he has to do justice and give satisfaction to the community not an individual. It is proclaimed that let legislators decide the issue, but Judges are perhaps more apt than legislators to take a long view.

Judges are just like any other human being. The reason that Judges are appointed is that even a good man cannot be trusted to decide a cause in which he is himself concerned. A judge is a student who marks his own examination paper. He should have learned to know evil not from his own soul, but from observation of evil in others.

William Shakespeare in Henry VII has proclaimed: "Heaven is above all; yet there sits a Judge. That no King can corrupt." Today we have upright judges. Shakespeare calls them "brave judge". Injustice is relatively easy to bear. What stings is justice. Let justice be done though the world perish is an age-old saying of more than five hundred years. Proclaiming respect for judges and the superior judiciary apparently is a hollow, deceitful proclamation. Love of justice is, in most cases, these days, nothing more than the fear of suffering from justice from acts done.

The French Revolutionary Leader Pierre Vergriand has declared: "When justice has spoken, humanity must have its turn." Do we have the right to exist without justice. The deceased Pope John Paul II had remarked: "Only a socially just country has the right to exist".

Today Pakistan International Airlines, Pakistan Steel Mills, Pakistan Railways, Pakistan Electric Power Company, to name a few collectively are suffering loss of Rs 360 billion a year due to nepotism, corruption, mismanagement. This means this poor country is suffering a loss of Rs 100 crores a day every day of the year. The government makes the nation bleed by pouring in billions of rupees to support such loss-making organisations.

No remedial measures are adopted to stem these losses. Financial losses on bona fide commercial considerations are acceptable. Losses due to corruption, loot, plunder and mismanagement is unacceptable. Should our superior judiciary be indifferent and turn their face the other side and allow this poor hapless country to bleed further.

The judges are part of our society. They are as loyal if not more than any other poor countrymen. They have taken an oath to defend, protect the law and the Constitution. Surely they cannot remain indifferent to the way this country is crawling. Destruction of the country under the cover of democracy is not acceptable. Not one institution save the Superior Judiciary is working. In the Sindh High Court, as against the strength of 40 judges, presently there are only 15 judges. They work from 8.30 AM to 2.30 PM and at times even thereafter they take lunch and offer Zohr prayers in their chambers and apparently go home late in the evening.

They have a family and children. Not all know the circumstances and suffering they undertake in the performance of their functions. If after the movement of lawyers, civil society, press and media, the judiciary has been restored, should the nation not trust them and permit them to work. Making wild, ill-founded allegations and accusations, in some cases by Lawyers paid to do this dirty work is no service to our country. This country is behind our Judges. Let there be no doubt about it. We have suffered both through military dictators and the so-called democratically

elected leaders. Both have given us nothing but misery, suffering and sorrow. On December 3, 2011, senior Advocate Aitzaz Ahsan, as reported in Business Recorder correctly claimed: "if remedy-seekers did not get relief from the executives and the parliament they would rush to the superior judiciary." No one will disagree that the superior judiciary is an alternative to the Parliament.

Cicero more than two thousand years back commented on the role of judges thus: "It is always the business of the judges in a trial to find out the truth". It should always be remembered that it is the judges who are the guardians of justice in this land. These are the wise claims of Lord Denning M.R. Even after deletion of the Concurrent List from the Constitution after the 18th Amendment, the legislature at the Centre continues to promulgate Labour Legislation.

Extension by four months by the National Assembly to the Industrial Relations Ordinance 2011 is a recent example. Judges are perhaps more apt than legislatures to take a long view. Judges are just like any other human beings. They should nonetheless be trusted. Thomas Jefferson has aptly remarked: "Judges should always be men of learning and experience in the laws, of exemplary morals, great patience, calmness and attention, their minds should not be distracted with jarring interests, they should not be dependant upon any man or body of men".

Lord Macaulay has remarked: "The reason that judges are appointed is, that even a good man cannot be trusted to decide a cause in which he is himself concerned".

Lord Mansfield in a case titled R Vs Wilkes (1770) 4 Burr. 2527 at 2562 talking about self and other Judges has said: "I will not do that which my conscience tell me is wrong, upon this occasion, to gain the daily praise of all the papers that come from the press. I will not avoid doing what I think is right, though it should draw on me the whole artillery of libels, all that falsehood and malice can invent, or the credibility of a deluded populace can swallow...Once for all, let it be understood, that no endeavours of this kind will influence any man who at present sits here." Judges of the superior judiciary are philologists of the highest order.

Sir William Scott has rightly observed in a case that to vindicate the policy of the law is no necessary part of the office of a Judge. How awful it is to some, when the right judge judges rightly. Today well-considered and balanced judgements remind one of William Shakespeare remarks:

"O wise and upright judge. How much more older art thou than thy looks." There is a Latin proverb: "The best law leaves the least discretion to the judge." If our legislators pass laws not on the basis of directions but conscience, then Chaudhry Aitzaz Ahsan would have been questioned as to the reason he gave the statement in the press on December 3, 2011 at Islamabad.

There is a famous proverb: "A good judge conceives quickly as judges slowly." When a judge sits in judgements over a fellow man, he should not be made to feel if a sword is pointed at his own heart. It is the duty of a judge to enquire not only into the matter, but into the circumstances of the matter. When a judge puts on his robes, he put off his relation to any, becomes without pedigree John Austin in "Austin's Jurisprudence" has claimed: "That part of the law of every country which was made by judges has been far better made than the part which consists of statutes enacted by the legislature."

Judges are subject to the same ambitions, passions, prejudice and fear. If you prick them, they bleed. However, high the present general standard of judicial competence, there will always be human weaknesses which may possibly affect their judgements. This may be endearing, but should not encourage certain maverick lawyers to shout foul. Because judges are, after all men, not machines, one must expect judicial frailties. But be assured these are unintentional. We should not judge them too harshly.

Precautions can be taken to limit the damage, if caused, through their imperfections to the interest of justice. By careful scrutiny one can hope to detect, deter and defeat potential injustices, but certainly not through verbose theatrical showmanship. To curb this growing tendency amongst certain elements, it is essential that judicial language by our apex court and even high court be more rigorous and forceful but not capricious, arbitrary or whimsical. If there is presently force of some judicial personalities, it is due to the strength of the character, honesty, sincerity and dedication to work of such Judges. Judges are without constituency and answerable to no one except to their consciences and the law.

As Judges they are drawn from a broad spectrum of society - the one thing which is perhaps in common is that, they are better trained and more in tune with current social problems than our politicians. Half a century experience in the legal profession has led me to conclude that a judge rarely performs his functions adequately unless the case before

him is adequately presented. The position of a judge is that of an oyster anchored in one place, unable to take the initiative, unable to go out after things, restricted to working on and digesting that which the fortuitous eddies and currents of litigation may bring his way. My experience as a student of law has led me to conclude that judges are in many respects, like parents.

You have to give them a good enough reason to do what you want. Judges do not have an easy job. They repeatedly do what the rest of us seek to avoid: make decisions. They carry out this function in public. The judge has the burden of resolving day after day and week after week, a long succession of issues, each one of which occupies the Doctor - professor - critics for months and even years of specialized study.

Judges do make mistakes. To err is human. However, no motives are to be attributed to them. It be always remembered that judges have burdensome responsibilities to discharge. He has power over the lives and livelihood of all those litigants who enter his court. The pity is that there is not more judge made law in our country.

Labour jurisprudence in this country woefully is suffering today when a judge is dealing with people at their most unattractive or most unreasonable or when they are most completely revealed as cheats, liars, corrupt and dishonest, he cannot easily comply with his judicial oath to do right to all people.

The vocation of a judge is akin to priesthood. They are eager to protect the mysteries of their craft. They do not respond to public criticism aimed at misleading and misguiding this nation. Judges are mere mortals but they are asked to perform a function that is truly divine. Because Judges are men, not machines, we expect judicial frailties and judge them not too harshly. Let them be trusted.

(The writer is an advocate of Supreme Court)

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