



A Word To Milords

By BS Murthy

Seldom, if at all, do the proponents as well as the opponents of the vexed collegium system delve much into the antecedents of its coming into being.

So, here we go; first, in pursuance of a committed judiciary, it was Justice AN Ray's elevation, by the supersession of three senior most Supreme Court judges in 1973, followed by the side-lining of Justice HR Khanna in 1977 for having been the sole defender of the citizen's right to life and liberty during India's infamous internal emergency. Then, adding insult to injury was the 1980 direct induction of Justice Baharul Islam, the jurist-politician, on the vaunted bench, all orchestrated by the dictatorial daughter of the autocratic Nehru. Yet, when Indira was alive, the successive justices conceded her executive right to appoint the judges, though in consultation with the Chief Justice (First Judges case, 1981). It was only a decade after her death that the judiciary made bold to wrest the initiative from the executive with the Second Judges case (1993). But with the disarray of successive central sarkars thereafter, in 1998, the emboldened Milords through the Third Judges Case became the Lords unto themselves in their Collegium Rings. That is fencing themselves from the executive arm, once and for all.

Now that they had long avenged their slights and had the last laugh too a decade back in negating the NJAC Act, it's time for Milords to take stock of the untenable situation in which our judiciary has come to lay, and this word is meant just to be an aid. And what is their argument against the unanimous NJAC – the mere presence of the Union Law Minister in the selection committee of five would

impinge upon judicial independence! LOL. So, by the same logic, the selected judges should be toeing the judicial line drawn by the collegium Milords, right. Oh, how specious, but they are gray-haired enough to know that independence of mind and living by the principles are the characteristics of spirited men and women, but that is just an excuse to hold on to their usurped power to further their nepotistic causes.

With around one lakh cases lying on their own benches and sixty-five lakhs in high courts under their watch and ward, not to speak of over five crores in the so-called lower courts, if it's not the time for the collegium lords to self-introspect, then it has only to be at the calamity. It's but natural that their judicial time leaves not much time for attending to the herculean task of finding the right judges to adorn the higher benches, made difficult by the prevailing state of our compromised polity. So, lacking the wherewithal to venture into the discovery channel besides being hard-pressed to dispense justice in time, is like falling between two stools. Surely, Milords cannot be unaware of the fact that they have bitten off the judicial cake more than they could chew. Why, they are even incapable of filling around thirty percent of their high court benches, not to speak of speeding up PMLA proceedings! Whatever, they could not be insensitive to the abysmal state of the judicial affairs, taken as a whole, hamstrung with mundane ailments one too many.

So, the question that naturally arises is why won't they untangle themselves from the tangled collegium web for personal relief as well as for the public good. Well, judges are human too, and power intoxicates them no less, made worse by our extra selfish times. If, by chance, Milords have read thus far to develop second thoughts, then they may go through further for a welcome denouement.

"Ay, sir. To be honest, as this world goes, is to be one man picked out of ten thousand"- Hamlet to Polonius.

That was then, and if Shakespeare were to revise it now, Hamlet would've said 'out of hundred thousand'.

So to say, the clue to the honesty drop of our times was provided by Andy Hargreaves, "There is no morality without temptation; otherwise it is just lack of opportunity".

However, be it in the world of yore with limited opportunities or in the modern times with unlimited avenues, the honest are few and far between but the Bard of Avon wouldn't have meant that the rest of the multitudes were patently dishonest. The master's intent would've been that rarely are men innately honest but the vast majority of them lack the conviction to be upright, regardless. In other words, the bulk of the people by nature are character-

neutral and by disposition are fence-sitters. It's thus, the ethos of an organization comes to be shaped by the upright or deviant, as the case may be, and that counts.

It is in this context that the exceptional thinking of the much-maligned Joseph Goebbels, expressed in his 'Addendum to Adolf Hitler's Testament' that brings forth another Shakespearean dictum, "Virtue itself turns vice, being misapplied, / And vice sometime by action dignified", becomes eminently relevant.

"The Führer has ordered me, in the event of the collapse of the defense, to leave the Reich capital Berlin and to participate as a leading member in a government appointed by him.

For the first time in my life I must categorically refuse to obey an order of the Führer. My wife and my children join me in this refusal. Otherwise—quite apart from the fact that for human reasons and reasons of personal loyalty we could never bring ourselves to leave the Führer alone in his most difficult hour—I would regard myself for the rest of my life as a dishonorable renegade and a contemptible scoundrel, who, together with his self-respect, would also lose the respect of his people, which would have to be the prerequisite for any further service by me in shaping the future of the German nation and the German Reich.

Amid the delirium of betrayal that surrounds the Führer in these critical days of the war, there must at least be some who stand by him unconditionally and unto death, even if this contradicts a formal order, however well-founded, that he expresses in his political testament.

I believe that by doing this I am rendering the best service to the German people for its future, because in the difficult times that lie ahead, examples are more important than men. There will always be men who show the nation the way to freedom. But a reconstruction of our national life would be impossible if it did not develop on the foundation of clear examples comprehensible to everyone.

For this reason, together with my wife and in the name of my children, who are too young to express themselves but who, if they were of the necessary age, would unreservedly join in this decision, I declare my irrevocable determination not to leave the Reich capital even if it falls, and rather to end a life at the Führer's side that has no personal value for me if I cannot devote it in the service of the Führer and at his side.

Given in Berlin, 29 April 1945, 5:30 a.m.

Dr. Goebbels" [Emphasis supplied]

What examples the collegium benches had set for the judges it inducts into the judicial system – Not one but two Chief Justices went judicial overboard to protect a notorious woman of judicial pedigree from being prosecuted for her wrongdoings though their brother judge said that she should be hauled up as a fraudster. While some bails have become the instruments of favour, the ideological biases emanating from some of the benches even foul the country's atmosphere. So to say, in all such cases, miscarriage of justice is not only done but is seen to be done, without any remorse or shame, not even later-day regret. But on the contrary, the fear to face the truth grips the ultimate bench in that save the honourable Justice Gogoi exception of the Ram Janma Bhoomi litigation, it is dead scared of dispensing justice in case of Kashi, Mathura etc. That successive CJs should lack the courage to resolve the country's cultural vexations speaks for the lack of character and the absence of conviction in the collegium benches.

Given that our society has become grossly corrupt, by and large that is, it is a matter of segregating the honest grain from the dishonest chaff that is bound to be beyond the narrow collegium vision as that is possible only through a broad NJAC search. If anything, the scandal of the burning bundles underscores this well and true – how come Justice Verma was so unabashedly unashamed is the question. Why not; he could only be cursing his bad luck that burnt all his ill gains (is it so); how fair it is to expect him to forego whatever might be in his retirement store, especially as much of his *biradari* continues to make merry, without let or hindrance that is.

However, I for one believe that Justice Surya Kant is better than most of the collegium-era Chiefs and as I dedicate this word to him as it's a product of his address in the recent Ram Jethmalani Memorial Lecture, I urge him to grasp the Goebbels moment of his destiny to change our country's judicial course. That's by bringing the curtains down on the ugly collegium drama that is being staged for far too long. Maybe, he can give a thought to it as it comes from the maternal grandson of the upright C. Kameswara Rao, author of 'The Law of Damages and Compensation' among others, who was wont to advocate only the just causes that tended the Judges of the District Court in Kakinada, where he had practiced, to pre-judge their merit.

