**When judges talk**

BY A . G . N O O R A N I  2020-11-14

THE 1958 report of the 14th Law Commission of India is a classic of its kind, which is why no one refers to it anymore. In a marked decline in the quality of the judicial process, now judges talk out of turn. It says: `In the early British days and till very recently, the British and Indian Judges maintained as a rule a tradition of isolation and aloofness.... So zealous were these judges to guard their independence ... that it was said of one high court that the chief justice and judges would not approach the precincts of the government house.

Nowadays, we treat invitations from the government house as `commands` Newspapers write of judges being `granted` interviews by ministers. It has become frequent for newly appointed judges to accept invitations to entertainment from representative associations and even private citizens. Some members of the bar have made it a practice to entertain all incoming judges.

Sir Winston Churchill said, `A form of life and conduct far more severe and restricted than that of ordinary people is required from judges and, though unwritten, has been most strictly observed. They are at once privileged and restricted.

As far back as 1985, a group of supreme court judges who fancied themselves `leftists` emerged. Justice D.A. Desai asserted, `I propose to remain in the system, corrode it and refill it with new elements so that the system can ef fectively render justice.` Such a course is not open to a judge. At the IndoGDR seminar that year, Justice O.

Chinnappa Reddy accused the Indian judiciary of being `over-ready to uphold the rights of the owners of property`. He asked, `Is it possible to bring about a basic change in the structure of society without bringing about a changein the basic structure ofthe constitution?` The people alone, through elected representatives, can bring about fundamental change in the system. Their mandate will command judicial respect but not blind compliance, for the judges are sworn to `uphold the constitution and the laws` When judges so plainly indicate their views on constitutional issues in extrajudicial rhetoric, they not only impair the authority and impartiality of the court but disqualify themselves from trying cases in which those issues are raised.

When judges violate their oath of office, they deserve the kind of censure that the Calcutta High Court delivered on the chief minister of Bengal A.K. Fazlul Huq in 1943 for interfering in a criminal case. `A person who takes an oath or makes an affirmation totellthe truthinajudicialproceedingand breaks it is guilty of perjury and may be punished at law by the courts. A person,however, who on tal(ing up an office is required by law to take an oath of office that he will faithfully perform the duties of that office takes what is called a promissory oath. The breach of a promissory oath in the absence of a special provision of law to that effect is not punishable at law. ..

`But the clear violation of it brands a man as unfit for public office. If solemn promissory oaths by persons who take high office in the state are to be disregarded as mere formalities, there is no possibility of good government. Mr Huq is left to the contemplation and judgement of his fellowmen.

It is true that we are compelled to navigate through choppy waters. Attempts to codify rules have had poor success. Sir Daniel Maxwell-Fyfe, QC, Earl of Kilmuir, emphasised `the importance of keeping the judiciary in this country insulated from the controversies of the day. ... As a general rule it is undesirable for members of the judiciary to broadcast on the wireless or to appear on television`. He added that the lord chancellor had no jurisdiction over thematter, but that a judge asked to broadcast ought to consult with him.

Lord Pannick, QC, wrote: `Judicial independence is compromised not by public explanation of the judge`sviews but by attempts to restrain him and threats to dismiss him if he does not conform to conventions which have no legal force and are contrary to the public interest. A judge should be fully entitled to speak out on matters of public concern so longashe doesnotgivepeoplecauseforsuspecting bias or partiality in the cases to be heardinhis courtand solongashe refrains from comment on matters of political controversy.

In 1989, the Kilmuir rules were sent packing. But some clear rules survive no political comments, no participation in business whether as directors or partners.

Talks on the BBC are 01(ay if the subject is not controversial (ergo no chat shows for judges), lectures are Kne, as is editing works on law.

It is established that even an intemperate attack on a judge does not constitute contempt of court if his speech or conduct was a public performance outside the court. He must rely on the law of defamation like any other citizen. The writer is an author and a lawyer based in Mumbai.