

Aurangzeb Was So Wicked

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Aurangzeb, the sixth Mogul Emperor was such a wicked man who tried to enforce Islamic laws and Islamic values in India. For about four centuries people lived with this wickedness without arousing much comment, except that Shivaji did revolt against Mogul rule. But the main conflict of Aurangzeb was not with the Marathas but with the Muslim Sultanates in the Deccan, in particular the Bahamani Kingdom. Forgotten is the fact that this wicked emperor was the ruler to whom the priests of Mahakal Temple complained that the temple had been desecrated because the commanders of the Mogul cavalry had stabled their horses in the temple and the emperor issued a 'Farman' to the effect that as an act of penance government would give four seers of ghee every day in perpetuity to light devotional lamps. Incidentally, even today government follows that Farman.

The Vishwa Hindu Parishad, after more than four centuries, has suddenly woken up to the evil of Aurangzeb. Why now? Well, it is never too late to start, especially if one's antagonist is dead and gone and cannot retaliate. Farfetched thought it may seem, the relationship between VHP and Aurangzeb is now replicated in the saga of Markandey Katju versus the previous government and three previous Chief Justices of India. More than ten years ago Justice Katju was Chief Justice of the Madras High Court and one Ashok Kumar, a member of the higher judicial service in Tamil Nadu, became an additional judge of the Madras High Court. An Additional Judge can be appointed for a maximum period of two years. Of course under Article 217 an Additional Judge of the High Court can be appointed as a full-fledged High Court Judge. Justice Markandey Katju has alleged that the Additional Judge in question had a reputation for dishonesty, he had reported the matter to the Chief Justice of India, who after an appropriate enquiry found that Justice Katju's allegations had substance and, therefore, the Chief Justice of India did not recommend the confirmation of the Additional Judge as a permanent judge. There the matter rested and no one would have bothered about the case.

Ten years after the event Justice Katju, who had been elevated to the Supreme Court, served his full term and, after retirement, was appointed as Chairman of the Press Council of India, suddenly came up with a statement that the judge of the Madras High Court in question was corrupt, had helped the DMK bigwigs and that because he was not confirmed Karunanidhi threatened Manmohan Singh that if the judge was not confirmed DMK would withdraw support and the government would fall. On this, according to Justice Katju, Manmohan Singh panicked; his law minister H.R. Bharadwaj put pressure on Justice R.C. Lahoti CJI and the CJI agreed to extend the tenure of the judge. The successor CJI advised government to confirm the judge, but transferred the judge from Madras to another High Court. The judge retired and is now deceased. The ten years gap and the demise of the judge in question have not deterred a hitherto silent Justice Katju from his repeated outcry against what he felt was proof of the corruption of the higher judiciary and the political interference in judicial appointments. Manmohan pressurised the Chief Justice because Karunanidhi pressurised Manmohan Singh. Three successive Chief Justices of India, Justice Lahoti, Sabharwal and Balakrishnan succumbed to political pressure and confirmed a corrupt judge. Thus, to the list of villains, are added the names of Lahoti, Sabharwal and Balakrishnan. That really means that the wrong people were chosen as Chief Justices of India. The question is how a system which, according to Justice Katju, is weak and venal and chooses wrong people as Chief Justice, selected that jewel, that ray serene, Markandey Katju as a judge of the Supreme Court. Is the appointment of Lahoti, Sabharwal and Balakrishnan an aberration, or is the appointment of Katju the aberration?

Justice Katju's outburst is manna from heaven for our media, especially Arnab Goswami. What a lip smacking feast is offered! Manmohan Singh is both weak and wicked, three successive Chief Justices are wicked and evil, Karunanidhi is a monster and only Arnab Goswami and Justice Markandey Katju smell of roses. To this are added certain shrill voices which want to have a new system of appointment of judges, which obviates political interference in appointment of the higher judiciary. The collegium which advises the Chief Justice, who advises the President, consists of weak-kneed judges who cannot stand up for the independence of

the judiciary. Therefore, create a National Judicial Commission in which, besides the Chief Justice and some other judges, there is also the Law Minister and eminent jurists appointed by government. Is it really the case that such a Commission will be more independent than a collegium of judges? Whom is one trying to fool? In any case the independence of the judiciary comes not from appointment of judges but rather from immunity from arbitrary removal from office. It comes from Article 141 which states that the law declared by the Supreme Court is binding on everyone. It comes from Article 129 which makes the Supreme Court a court of record and Article 215 which makes every High Court a court of record. It comes from the basic separation of powers built into the Constitution.

Every constitutional appointment has to be made by the President, who is required by the Constitution to abide by the aid and advice of the Council of Ministers. In the ultimate analysis the final decision regarding appointment of judges is that of the Executive. Under Article 2, section 2 of the American Constitution, the President appoints judges of the Supreme Court, but in exercising this power he had to obtain the consent of the Senate. Both the Executive and the Legislature, therefore, are involved in the process of appointment of judges, but the Judiciary has no say in this behalf. In India the Judiciary is the one which advises the President, who cannot appoint as a judge a person not approved by the Chief Justice of India. Why should this system be changed? In India if appointments were to be confirmed by Parliament there would be total horse trading in the appointment of judges. Do we want that?

To return to Justice Markandey Katju, he should realise that when a marriage is solemnised according to the Christian faith the officiating priest, before finalising the vows asks that if there is anyone who has objection to the marriage he should speak out now, or for ever hold his peace. That applies to Justice Katju because ten years after the event his raking up muck helps no one except Katju himself, who is deriving so much cheap publicity by titillating a gullible people who revel in listening to scandal. In the process incalculable harm is done because an innocuous person such as Manmohan Singh is subjected to unwarranted calumny.
