

COMMITTEE ON JUDICIAL ACCOUNTABILITY

65 Lawyers Chambers
Supreme Court of India, New Delhi

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RESOLUTION OF THE COMMITTEE ON JUDICIAL ACCOUNTABILITY DATED 13TH DECEMBER 2002

The Committee on Judicial Accountability (COJA) takes note of the judicial scandals that have unfolded in the High Court in Punjab and Haryana, Karnataka and Rajasthan. COJA notes that as far back as in August this year the Chief Justice of Punjab and Haryana High Court had submitted a report to the Chief Justice of India holding three judges of the High Court guilty of acts of Judicial impropriety. COJA had in an earlier resolution asked the then Chief Justice of India to make public that report and act upon it. The committee further notes that the then Chief Justice of India has appointed three committees of three judges each to inquire into the allegations against judges of each of the three High Courts. COJA again reiterates that the reports of these three committees should be made public in the interest of transparency.

The events from Punjab and Haryana, Karnataka and Rajasthan as they have unfolded have again underlined the complete lack of accountability of the higher judiciary in India and the urgent need to correct this deficiency which is seriously affecting the judiciary and the administration of justice in India. COJA feels that there are three main reasons for the lack of accountability in the judiciary. They are as follows:

- 1) The lack of any effective institutional mechanism for taking action against judges guilty of misconduct. Impeachment, which is the only system in the Constitution for taking action against judges guilty of misconduct, had been found to be completely impractical and ineffective as demonstrated in the V. Ramaswami case. There has been talk of an in-house machinery devised by the judges themselves to deal with this problem. Though this in-house machinery appears to have been activated for the first time by the present Chief Justice of India to deal with the problems arising from Punjab and Haryana, Karnataka, and Rajasthan, it is clear that this cannot be a proper solution to the problem. The main reason for this is, that this remains an informal system, with no legal method for enforcing the decision of the Chief Justice of India or of any committee of Judges. Also, the Chief Justice of any committee of Judges operating as an in-house machinery would not have any powers of investigation which are often required in such cases. Moreover, the Chief Justice of India, or any committee of sitting judges would

not normally have the time to satisfactorily inquire into or investigate the large number of cases of judicial misbehaviour which are now coming to light.

COJA has been recommending for a long time now that a full time, and High-powered, National Judicial Commission with investigative machinery under its control and with disciplinary powers over judges of the superior judiciary should be created by means of a constitutional amendment. The recent events have underlined the urgent need for such a Judicial Commission. COJA therefore again urges the government and Parliament to urgently bring and pass such a constitutional amendment.

- 2 The judicial scandal which has surfaced in Karnataka has demonstrated that the Veeraswamy judgement which prohibits the registration of an FIR, and the initiation of a criminal investigation against a judge without the prior permission of the Chief Justice of India, is also proving to be serious impediment to the accountability of the higher judiciary. It has alleged that the reason why the Karnataka police did not register an FIR and refused to investigate the matter was because of the injunction of the Veeraswamy judgement. The chilling effect that the judgement has had is also clear from the fact that in the last 12 years since the judgement, despite several allegations of judicial misconduct, amounting to criminal offences coming from various part of the country against judges of higher judiciary, there is not been a single case where the Chief Justice of India has himself asked the CBI or the police to investigate an offence against a judge, or has given a consent to the police to do so. Of course, there may not have been many cases where the consent of the Chief Justice was sought by the police, but that only underlined the chilling effect that the judgement has had on the investigative agencies, when it comes to investigating offences committed by members of the higher judiciary. The apprehension that allowing the police which is under executive to investigate and harass judges would compromise the independence of the judiciary is totally unfounded. The judiciary had the power to interfere with any investigation at any stage if it feels that it is malafide. The normal rule of law must prevail and must be the same for anyone. COJA therefore urges the Supreme Court to suo moto reconsider and overrule the Veeraswamy judgement and remove the requirement of prior permission of the Chief Justice of India for registration of offences committed by members of the higher judiciary or for their investigation. If the Supreme Court fails to do this, COJA would urge the government and the parliament to enact suitable legislation to overrule the Veeraswamy judgement.
- 3 The events of Karnataka, and Rajasthan, where contempt notices have been issued by the High Courts against the press which have reported the scandals, have also highlighted the pressing and urgent need to reform the contempt law in the country. The fact that in a contempt action, the judges often act as judges in their own cause and can even refuse to allow the contemnor to plead truth as a defence has undoubtedly played a major role in deterring people from exposing judicial corruption. It is obvious that any allegation against a judge which is true or which

has been made in good faith and on some reasonable basis, cannot be made the subject of a contempt action. Exposing judicial corruption is in public interest and this cannot be done unless the law of contempt is appropriately reformed and truth, or good faith coupled with due care and caution are made good defences in contempt action. COJA therefore urges the government and the Parliament to make suitable amendments in the Contempt of Courts Act for this purpose.

COJA is further of the view that transferring a judge guilty of misconduct from one High Court to another is not a solution to the problem and is bound to cause resentment in the recipient High Court. There must be permanent institutional mechanism, such as the National Judicial Commission armed with adequate powers, for taking action against such judges.

COJA feels that the credibility of the entire judiciary and the faith of the ordinary people in the administration of justice in the country is at stake today. Unless urgent steps are taken on the lines suggested above to make the higher judiciary accountable, misconduct in the judiciary and public disquiet about it are bound to increase. The ball is clearly in the hands of Parliament, the government and the judiciary itself. They must together demonstrate their commitment to the reforms.