



Tuesday 18 August 2009

Supreme power

“The judges’ selection procedure is opaque.”

The Law Commission headed by former Supreme Court judge A R Lakshmanan has, in a fresh report, reiterated its earlier recommendation for a change in the system of appointment of judges of the higher judiciary. At present the judges of the Supreme Court and high courts are appointed by the President on the recommendation of the Chief Justice of India who forms his views in consultation with a collegiums of judges. The system came into being as a result of a Supreme Court judgment in the 1993, which was endorsed again by the court in 1998. But as the commission has noted and the continuing debate on the matter and the working of the system have shown, the procedure is wrong, deficient and prone to errors. In all other democratic countries the executive has a major, if not decisive, role in the selection of judges. The Constitution envisages all organs of state to be inter-related. None of it can be autonomous to the extent of being authoritarian.

The present procedure is closed and opaque and leads to self-perpetuation of the judiciary. Other organs of state are products of a legitimising agency outside of itself — for the executive it is the legislature and for the legislature it is the people. The judiciary cannot be its own creation. It is wrong to assume that the independence of the judiciary will be compromised if the executive is given a say in the selection of judges. Cases of judicial improprieties and charges of corruption have actually increased after the present system came into force. It is the constitutional right of the executive to be involved in the choice of judges. The court’s arrogation of powers to select future judges was judicial overreach and needs to be rectified. The commission has suggested an equal role for the executive and the judiciary in the process. The exact modalities can be decided by the government in consultation with the judiciary and parliament.

The Chief Justice of India has said that the government and parliament can change the present system if necessary. The Law Commission’s other recommendations like the need to make the posts of high court chief justices non-transferable and avoiding appointment of members from the bar as judges in the same state are also sensible and need to be pursued.

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