

NATIONAL CONSULTATION ON JUDICIAL ACCOUNTABILITY AND THE GRAM NYAYALAYA ACT 2008

19th September 2009, New Delhi

BACKGROUND NOTE

The manner and functioning of our country's higher judiciary has been a matter of grave concern especially in wake of the many corruption scandals that have cropped up recently and the embarrassing controversy regarding the declaration of assets by Judges of the High Courts and the Supreme Court of India. The recent judicial scandals of Ghaziabad, Chandigarh and Calcutta, involving many judges of the higher judiciary, have aroused a great deal of interest in corruption in the higher judiciary and in holding judges accountable. With the UPA government preparing a road map for Judicial Reforms in the country, the issue of judicial accountability has taken a prominent position in public discourse. Even 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.

With the backdrop of these renewed efforts at judicial reforms, coming now from different quarters of society, the *Campaign for Judicial Accountability and Reform (CJAR)*, through this one day National Consultation proposes to discuss judicial accountability especially in the context of judicial appointments, accountability of judges for misconduct and the disclosure of assets by judges. CJAR also proposes to discuss the way forward with the Gram Nyayalaya Act 2008 which provides for the establishment of Gram Nyayalayas at the block level in the country, as the lowest tier of the judiciary for rural areas. Though passed in January 2009, several months later, the government has not taken any steps to implement the Act.

Judicial Accountability

1. System of appointments

The present system of appointing judges of the higher judiciary is not only mainly non-transparent and secretive but also suffers from arbitrariness, which allows free play to nepotistic considerations. No criterion has been laid down for selecting judges. No methodical or objective evaluation of proposed appointees is done on any criteria. The present system of appointment of judges by a collegium of a few judges, not only allows nepotism to flourish but also dubious backgrounds to be overlooked, as is witnessed by the case of Justice Soumitra Sen

of the Calcutta High Court. The present imperfect system replaced an earlier flawed one, of judicial appointments by the executive, which was largely misused and plagued with political consideration.

CJAR is of the view that the time has perhaps come to put in place a permanent full time body which selects judges in an objective, scientific and transparent manner, independent of both the government and the judiciary. Perhaps, we also need a confirmation process similar to what takes place before the US senate sub committee.

Points for discussion: Composition of the Appointments Commission, methodology adopted by the commission, transparency and public participation.

2. Accountability of judges for misconduct

The present system of impeachment of judges is impracticable, it being virtually impossible to have an impeachment motion signed by 100 MPs who are apprehensive of the consequences of their signing the motion on cases pending against them and their parties in various courts. There has been increased debate for an alternative system. The attempt being made in the Judges Inquiry (Amendment) Bill to institutionalize what is called the in-house procedure to investigate complaints against judges has several serious problems. In the first place, an in-house committee of three senior sitting judges or Chief Justices, if and when constituted, would disrupt the functioning of at least three courts. That is why we need a full-time body to do this work. Moreover, sitting judges often find it embarrassing to investigate complaints against brother judges. Therefore, despite formal complaints by CJAR no enquiry was conducted against Justice Jagdish Bhalla and Justice Vijendra Jain. On top of it, the Judges Inquiry Amendment Bill requires every complainant to swear an affidavit in support of his complaint and disclose the source of every information in his complaint. Also the in-house committee can also send the complainant to jail if they find his complaint frivolous or vexatious. Such draconian provisions would deter even honest and bonafide complaints. Moreover even after this committee of judges finds a judge guilty, the most the Chief Justice of India can do is to recommend the judge's impeachment which will again have to be voted in Parliament. The bill also provides an appeal of the judge to the Supreme Court even after removal by Parliament. All of the above constitutes a long and cumbersome procedure.

CJAR is of the view that the time has perhaps come to put in place an independent and full-time *National Judicial Commission* to receive complaints and investigate charges against Judges. Such a commission shall be independent of the government and the Judiciary and should have independent investigative machinery under their control.

Points for discussion: Composition of the commission, procedure and methodology adopted and public participation and transparency.

3. Declaration of Assets by Judges

The process of enacting the recent *Judges (declaration of Assets and Liabilities) Bill 2009* to ensure greater transparency about judges' assets, was triggered after an RTI query to the Supreme Court registry sought information on whether any judges had been filing declarations of their assets before the Chief Justice of India in terms of a resolution adopted by all the judges of the Supreme Court on May 7, 1997. As the Apex Court registry refused to divulge the information, making a distinction between the Supreme Court Registry and the office of the Chief Justice of India, the registry's decision was challenged before the Central Information Commission (CIC), which ruled in favour of the applicant. The Supreme Court subsequently went in appeal before the Delhi High Court challenging the CIC ruling. The High Court stayed the order of the CIC in which the Commission had held that the office of Chief Justice of India comes within the ambit of the RTI Act and information given to CJI has to be revealed to the RTI applicant. All this led to an unseemly spectacle.

The Supreme Court's non-transparent attitude on the disclosure of assets is in line with the judiciary's steadfast refusal to allow any transparency in the matter of appointment of judges, or for that matter, in the judiciary as a whole. The courts as well as the government have refused to disclose any information about the manner of appointments and transfers of judges of the High Court and the Supreme Court.

CJAR issued a statement signed by lawyers, activists and noted constitutional experts such as Fali S Nariman, Shanti Bhushan, Anil Divan and former Justice Rajinder Sachar demanding that the assets of Judges be made public under the proposed law asserting that only a public and annual declaration of assets as is done by all Federal Judges of the US, including the Judges of the US Supreme Court, would ensure that the objectives of transparency through this proposed Bill is achieved.

The government introduced the *Judges (declaration of Assets and Liabilities) Bill 2009* on August 3, 2009. However, Clause 6 (1) of the Bill provided:

Notwithstanding anything contained in any other law for the time being in force, the declarations made by a Judge to the competent authority shall not be made public or disclosed, and shall not be called for or put into question by an citizen, court or authority, and save as provided in sub-section (2), no judge shall be subjected to any inquiry or query in relation to the contents of the declarations by any person

This controversial secrecy clause defying all attempts at transparency in the judiciary through this proposed Bill, provoked unprecedented protests from various segments of society and from members of parliament cutting across party lines. As a result of this, the government was forced by the opposition to shelve the Judges Asset Bill.

If a landmark judgment of the Supreme Court mandates every candidate at an election to Parliament or legislative assembly to publicly declare his/ her assets and liabilities, there is no reason why the higher judiciary should be exempt from that requirement. This is the demand of transparency for effective accountability of every holder of a public office.

Though the Chief Justice of India after the recently concluded conference of Chief Justices' has stated that the judiciary will abide by parliamentary law regarding asset declaration by judges, it is unlikely that the government will bring a Bill for public declaration as the government finds it better to 'deal' with the judiciary rather than confront it.

Points for discussion: Campaign strategy for forcing the government to speedily enact a Bill for compulsory public disclosure of Judges' Assets.

Gram Nyayalaya Act 2008

The Government has passed the Gram Nyayalaya Act 2008, providing for the establishment of Gram Nyayalayas at the block level in the country, as the lowest tier of the judiciary for rural areas. The objects of the Act are to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities. These nyayalayas it is hoped would not only relieve the back log of cases but also provide for speedy and door step justice for the vast populations that inhabit rural India. However, months later, the government has not taken any steps to implement the Act. Effective implementation of this Act, albeit with necessary amendments, will go a long way in removing hindrances to access to justice for poor rural populations.

However various problems exist in the present Act which may pose serious obstacles to effective implementation. Perusal of the Act and preliminary analysis with various groups has brought out deficiencies in the Act with respect to the system of appointment of a Nyayadhikari for each court, the application of Codes of Civil and Criminal procedure, language of the court, number of such courts, etc. The system of appointment of Nyayadhikari by the State government in consultation with the High Court as provided in Section 5 of the Act, is fraught with problems. The appointment process is bound to be riddled with nepotism and corruption, with no objective criteria listed for the appointment. Since no system for evaluating the potential candidates has been laid down, the appointment process is bound to be used by the government to reward party functionaries. Instead of relying on common sense procedures and the principles of natural justice in the procedures of these village courts, the Act provides for the application of the Codes of Civil and Criminal Procedure as well as the Evidence Act, making it largely inaccessible to the common people without lawyers. The

Law Commission of India has recommended that the number of courts in the country be increased five fold. However with the proposed 5000 gram nyayalayas, there will only be a 50% increase in the number of courts, there not even being one court for every block in the country.

CJAR has entered into consultation with various stakeholders, discussing amendments to the existing Act and various other facets of the Act which need scrutiny even before implementation, thus campaigning for its effective and early implementation with necessary amendments.

Points for discussion: Amendments required to the Gram Nyayalaya Act, strategy to put pressure on the government to bring about the necessary amendments and effectuate the Act, other related matters.
