

On Corruption In Judiciary And Judicial Accountability

Har Dev Singh,

People's Democracy,

June 8, 2003 Vol 28, No. 23

A SPATE of scams involving members of higher judiciary in bribery, corruption, sex, favoritism and abuse of power has come as a great shock to the people. The arrest of Shamit Mukherjee, a Delhi High Court judge, just before being made permanent, magnified the shock beyond description so as to hasten the BJP-led government to announce the formation of a National Judicial Commission for appointments to the higher echelons of judiciary.

The public shock emanates from the fact that an institution whose incumbents are endowed with power to judge everybody should itself be comprised of questionable characters.

FORTIFIED JUDICIARY

What came as a shock to the public is really no surprise to many who are knowledgeable.

Higher judiciary in our country is the only institution that is virtually not accountable and at the same time enjoys exceptional constitutional protection and formidable weaponry such as contempt of court to silence the critics. The judiciary has fortified its citadel by judicial interpretation. In a case arising from the recovery of huge amounts from the house of Veeramswamy, Chief Justice of Madras High Court in 1974, the Supreme Court ruled that no FIR could be recorded against a judge without permission from the Chief Justice of India.

The rot in judiciary set in with the method of appointments based not on any criteria but on proximity to those vested with the power to appoint, and that too by a secretive method. The method of appointment has variously been divested of accountability by the government, then by the judiciary and now by the 3 to 5 senior judges called Collegium. Over half a century of experimentation has not improved the situation but made things worse, as is evident from the crisis we now witness.

That persons of questionable integrity increasingly find place in the judiciary is thus no surprise when seen in the backdrop of mounting corruption in the state apparatus. The constitution ensures total protection to a judge of High Court or Supreme Court and he can only be removed by impeachment under article 124,

after 100 Lok Sabha or 50 Rajya Sabha members move the speaker who may refer the charges to a committee of judges whose verdict is put up before both the houses of parliament. The judge can only be removed if a two third majority of members present and voting approve the verdict of the committee.

The only instance in which an impeachment motion was moved is the case of Justice V Ramaswami of the Supreme Court. However, the motion fell through as members of the Congress(I) under a whip abstained from voting.

The situation being as it is, the accountability of judges emerges as vital for an incorruptible judiciary.

GOVERNMENT'S SOMERSAULT

Efforts have been made since quite a long time to find a solution. The Committee on Judicial Accountability (COJA), consisting of some members of the legal profession concerned to safeguard the independence of judiciary in 1997, worked out a proposal to amend the constitution to constitute a high-powered National Judicial Commission (NJC). The NJC is to comprise five members nominated by the judiciary, the government, the opposition and the Bar, and is entrusted with the power to appoint and remove judges, including disciplinary action against the errant judges. It is to be an independent full-time body with security of tenure and having its own investigative machinery.

This proposal to constitute an NJC was approved by almost all major political parties and even included in their election manifestoes. The Congress(I) subsequently approved it.

Now the government has, by a somersault, proposed to create a truncated body comprising three members of judiciary, the law minister and a nominee of the prime minister, to appoint judges.

It is evident that this proposal is a ruse not only to maintain the status quo but to tighten the grip of the government on judiciary.

The Congress(I) has, however, reacted to it by proposing that we revert back to the practice of the government making appointments, which is the very source of the crisis.

ALARMING NEXUS

What is alarming is the reality that a nexus has developed between the corrupt members of judiciary, the government and the powerful and influential sections of society who contrive to make gains for themselves. The nexus, many a time,

includes some from the legal profession as well. Thus it is not in the interest of anyone of these quarters to change the system so as to have an independent and incorruptible judiciary.

The judiciary itself is wary of the change and many of its members consider any proposal of change as an incursion into their domain. That is why accepting that all is not well in their house, proposals have been made that the judiciary itself would lay down norms of behaviour and an in-house method by which its errant members may be dealt with. This too is an eyewash.

As we have been seen, the rot that has set in judiciary has undermined the judicial system to a point beyond salvation. Unless bold and drastic measures are initiated without further delay, nothing worthwhile can be achieved.

The colonial system that we have inherited was not fashioned for this country and is certainly not suitable for a country of over a billion inhabitants, for a society that is driven by inequities of caste, creed, religion and gender, with varied linguistic, cultural and ethnic backgrounds. Besides, unlike in developed countries, it is a society where substantial sections of the people are ill-fed, illiterate and victims of exploitation, poverty and oppression.

The judicial system that we have inherited is highly dilatory, expensive and beyond the reach of common man. And at the pinnacle we have a judiciary whose members, in increasing numbers, are involved in scams and scandals.

WHERE REFORM HAS TO START FROM

The reform has to begin with the higher judiciary, and from this very point we have to go further to other reforms. As has been said, many quarters that matter are really not interested to have an independent and bold judiciary. At the best, their interest is only in having some cosmetic changes which will enable them to have a pliable judiciary.

Who really want genuine changes in the system are those who are most affected. It is evidently the consumers of justice who want an independent and incorruptible judiciary which will safeguard the constitution and frustrate the attempts of the government and the powerful vested interests in the society to use it for their gain.

Judiciary in our system of government is of pivotal significance, endowed with unbounded power. It is to safeguard the constitution and ensure governance in accordance with laws.

We have a constitution that resolved, in its Preamble, *“to constitute India into a Sovereign Secular Democratic Republic and to secure JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY; assuring the dignity of the individual and the unity and integrity of the Nation.”*

The constitutional mandate is that all functionaries of the state, including judges, assume office under oath to safeguard the constitution. That in every day practice the tenets of sovereignty, socialism, secularism and democracy are violated speaks volumes about the system, the state of things and the health of judiciary. In whose interest, then, it is to have an independent and incorruptible judiciary? In whose interest, then, it is to have a corrupt and pliable judiciary? The answer is not far to seek.

The reality being witnessed is that we are being ruled by outfits and combinations that mortgage our sovereignty, violate the socialist principles, desecrate secularism and barter it away for communal frenzy, and substitute authoritarian laws and fascist tyranny in place of democracy. And all this is being sanctified by the judiciary.

One would not proceed to recent instances of violation of the constitutional mandate --- not only by state action but by the lawless laws enacted. The judiciary, by resort to interpretative mechanism, is widening its own domain and even frustrating the constitutional mandate by putting its seal of approval on illegal laws, state action and oppression of the working people and weaker sections of society. People's life and liberty has been drastically curtailed by laws such as POTA and a host of measures to change the not-too-progressive labour laws.

PEOPLE HAVE TO INTERVENE

It is only the people who are being targeted by a retrograde regime, manipulated by the neo-imperialist interests, and those who are pursuing avowedly communal policies to usher into a neo-fascist regime at home --- built upon intensified suppression of the working people, minorities and the weaker sex. It is these sections who need to have a judiciary that is independent and fearless so as to uphold the constitutional mandate.

The task of reform of the judicial system cannot be left to any one but the people. The consumers of justice must assert themselves and see that a thorough it is accomplished. Just as war is too serious a matter to be left to the generals alone, the judicial system is no less serious to be left to the judiciary, the government or

the legal profession. The people have to intervene. To begin with, the issue is "Corruption in Judiciary and Judicial Accountability."

As a step in this direction, a convention is being called by a large number of organisations representing lawyers, trade unions, human rights activists, women and others on August 2 at Agha Khan Hall, New Delhi.

The Committee on Judicial Accountability and All India Lawyers Union (AILU) have actively lent their active support to the convention so as to break the impasse and give the campaign a new direction that alone can make an impact and initiate a process to curb corruption in judiciary and render it accountable. This is the much-needed initial step to reform our judicial system.

Also available at

<http://www.ganashakti.com/old/2003/030609/feature2.htm>