

Panel Favours Judicial Commission

Suggests mechanism to keep tabs on SC, HC judges

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Mechanisms to give the government a say in appointing Supreme Court judges and to hear "complaints of misbehaviour and incapacity" against High Court and Supreme Court judges, have been recommended by the National Commission to Review the Working of the Constitution (NCRWC). The recommendations submitted last week by the commission led by Justice M.N. Venkatachaliah, India's former Chief Justice, came in the wake of calls for greater judicial accountability. A Parliamentary Standing Committee recently held the judiciary responsible for delays in filling judicial vacancies — a key factor in increasing backlogs of cases in courts.

In its report submitted last week, the Venkatachaliah Commission recommended the setting up of a national judicial commission (NJC) with the participation of the executive and the judiciary in making recommendations on the appointment of judges of the Supreme Court.

The report recommended that the commission be chaired by India's Chief Justice and include two senior most Supreme Court judges, the Union Law and Justice Minister and an eminent person nominated by the President after consulting the Chief Justice. The commission emphasised that the establishment of a national commission and its composition be treated as integral in view of the need to preserve the independence of the judiciary.

The Parliamentary Standing Committee on Home Affairs headed by senior Congress member Pranab Mukherjee recently blamed the judiciary for its failure to fill judicial vacancies, absolving the government of wrongdoing in this respect. "The judiciary in whom the power and the responsibility now vests has failed to fill the vacancies in judicial posts promptly and punctually and those vacancies of judges in all courts contribute to the huge pendency in a big way," its report to Parliament said.

"The committee is aware that for this state of affairs the Union Law Ministry is not blameworthy... The government is bereft of role in initiating the process of filling up of the vacancies," it said.

The report indicated that the situation had developed since October 1993 when the function of initiating a judicial appointment was taken over by the judiciary after a Supreme Court judgement.

Until then, the process to appoint a judge had to be initiated by the Justice Department as far as possible six months before the date of vacancy. Delays occurred, "but the government was answerable and accountable to Parliament," the report recalled. The committee also called for a mechanism to ensure judicial accountability. The Venkatachaliah Commission has recommended that a committee comprising the Chief Justice and two senior-most Supreme Court judges be exclusively empowered "to examine complaints of deviant behaviour of all kinds and

complaints of misbehaviour and incapacity against judges of the Supreme Court and the High Courts."

The commission said if the matter were found to be serious enough to call for a fuller investigation or inquiry, it would be referred for a full inquiry to a committee (constituted under the Judges' (Inquiry) Act, 1968).

It recommended that the Committee under the Judges Inquiry Act be a permanent committee with a fixed four-year tenure and not one constituted ad-hoc for a particular case or from case to case, as is the present position. It could be re-constituted every four years.

The report said if the committee recommends the removal of a Judge, "it shall be a convention that the judge promptly demits office himself. If he fails to do so, the matter will be processed for being placed before Parliament."

There have been allegations of corruption in judiciary as well as of increasing resort to contempt of court powers by judges.

Chief Justice of Supreme Court Sam Piroj Bharucha recently suggested that up to 20 per cent of judges in India were corrupt. Official figures released in February showed there were 67,626 contempt of court cases in High Courts as against 55,737 in May 2000 - 11,889 new cases in such a short span.

Senior advocates, including Attorney-General Soli Sorabjee, have been calling for allowing truth as a defence in contempt of court cases.

Some time ago, Sorabjee told an interviewer: "How can we not allow a person to justify what he says is not contempt? If he fails, we will come down heavily on him. Otherwise the law of contempt operates as a cover for a corrupt judge."

Senior Advocate and Rajya Sabha Member Fali Sam Nariman recently told an audience: "It would be absurd to say that although Article 124 (4) provides for the removal of a Judge for proved misbehaviour, no one can offer proof of such misbehaviour except on pain of being sent to jail for Contempt of Court."

The Venkatachaliah Commission has recommended "that, in matters of contempt, it shall be open to the Court to permit a defence of justification by truth on satisfaction as to the bona fides of the plea and it being in public interest." **UNI**