

## CAMPAIGN FOR JUDICIAL ACCOUNTABILITY AND REFORMS

### Resolution passed at the

### 3<sup>rd</sup> National Convention on “Making the Judiciary Accountable and Responsive to the People”

6<sup>th</sup> - 7<sup>th</sup> February 2010

*Nehru Memorial Library, Teen Murti House, New Delhi*

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The two day 3<sup>rd</sup> National Convention on “**Making the Judiciary Accountable and Responsive to the People**” organised by the *Campaign for Judicial Accountability and Reforms* was held at the Nehru Memorial Library, Teen Murti House, New Delhi on the 6<sup>th</sup>-7<sup>th</sup> of February 2010. The Convention was attended by over 200 people representing various organisations and movements from across the country. The Convention was addressed by a range of distinguished speakers on the twin issues of judicial accountability and reforms specifically dealing with the issues of appointment of judges and complaints against and removal of judges, the judiciary and public discourse, the judiciary and the environment-development dichotomy, the judiciary and civil liberties as well as the judiciary and the poor. At the conclusion of the convention, the Campaign resolved as follows:

The present system of appointments by the Collegium of Judges suffers from nepotism, arbitrariness and lack of transparency. We need a full time Judicial Appointments Commission for selecting judges of the higher judiciary as well as members of Commissions, Tribunals, etc. This should not comprise merely of retired judges, but should include other eminent members of civil society. This Commission must first lay down the criteria for selection and the method for selection as per the criteria. In particular the understanding of and sensitivity towards the social conditions of the common people must be an important criteria for judging the suitability of judicial appointments. The selection process must be transparent and the credentials and qualifications of the prospective appointees must be in the public domain.

The difference in the retirement age of High Court and Supreme Court judges has made many High Court judges subservient to the Collegium who decide their elevation. This has led to lobbying among High Court judges and Chief Justices as well. The Campaign believes that there is no justification for a different retirement age for High Court and Supreme Court Judges.

The fact that there is considerable corruption in the higher judiciary is evident from the string of recent scandals such as the Ghaziabad Provident Fund scam, the Chandigarh cash at judges door scam, the Justice Soumitra Sen and Justice Dinakaran cases, etc. The present system of impeachment has proved to be totally impracticable and ineffective for disciplining judges. There should be a similar commission for dealing with complaints against judges. This must have its own independent investigative machinery and should be empowered to examine the complaints and recommend the action against the errant judges, which would include

removal and registration of criminal cases against them. The commission may appoint a tribunal of three jurists to adjudicate on the misconduct of judges before its final decision. These complaints must also be dealt with transparently. A code of conduct for judges must be framed with full public consultation and made strictly enforceable.

The Campaign notes that misconduct of the bar has also grown enormously in recent times. The Bar Council of India has completely failed in disciplining misconducting lawyers due to conflicts of interest and corruption within the Bar Council of India. The Bar too must be made accountable to a completely independent statutory body. This is important because the bar is also an important actor in the administration of justice. It is the principle feeder cadre for judges and is often complicit in judicial corruption.

We feel there is no justification for retaining “scandalising the court or lowering the authority of the court” in the definition of criminal contempt and this should be deleted. Respect for or public confidence in the judiciary depends upon how the actions of the judiciary are perceived and not on preventing people from making any kind (including harsh) criticism. The laws of civil and criminal defamation are adequate to protect judges from scurrilous abuse.

The Campaign notes with regret that though the judiciary had itself declared the Right to Information as a fundamental right and had applied it to various institutions including candidates contesting elections, it is now dragging its feet and resisting the application of the RTI Act to itself. This is being done by framing rules which deter citizens from asking for information and put unreasonable restrictions on the disclosure of administrative or financial information about the court. This is also being done by the interference of the Courts with judgements of the Central Information Commission ordering disclosure of information with the judiciary such as for appointments of judges and complaints against judges, etc. The judiciary is thus defeating the object of the Right to Information Act which is to make every institution including the judiciary accountable to the people.

The Campaign finds that the judiciary has of late rendered many decisions displaying gross insensitivity to human rights and civil liberties particularly of the weak and the poor. Draconian laws such as POTA, TADA, AFSPA has been upheld and progressive laws such as the IMDT Act have been struck down and other pro people laws such as Contract Labour Act, Industrial Disputes Act are not being implemented. The insensitivity towards human rights is also apparent from the fact that even where prosecutions of innocent persons were found to be malafide and based on fabricated evidence, no action was ordered against the offending police officers. This has led to impunity in the police and the spectre of innocent persons being framed in a large number of bogus cases. The Supreme Court has gone to the extent of saying that laws made by Parliament should be interpreted in accordance with the economic policies of the executive government. In certain instances, this has led to a peculiar situation where economic policies of the government are given the judicial stamp. This often strangles political debate, as well as mobilisation of public opinion.

In particular, in the area of workmen jurisprudence and land acquisition disputes, the Campaign notes the attitude of the judiciary as being dismal. The current judicial system is getting far removed from the needs and rights of the poor and deprived section of society in substantial deviation from the directive principles of state policy as enshrined in the Constitution of India and even restricting the interpretation “right to life” as delineated in earlier pronouncements of the court. In fact the common people have virtually no access to the judicial system being unable to afford lawyers and also often because the language of the court is alien to the culture. The security obsession of the superior courts is also preventing access even to visitors thus destroying the very concept of open courts. With the current technology it would be easily possible to video record and indeed web telecast court proceedings which must be started immediately.

Courts have often been used to execute the desires of the incumbent government even against the law. Thus jhuggis along the Yamuna Pushta were demolished on the orders of the court to pave the way for the common wealth games village and the Akshardham Temple, in violation of formal government policy.

The Courts have acted whimsically and arbitrarily on environmental matters and have often invoked environment to demolish jhuggis, displace forest dwellers, etc. However the same considerations have not prevented them from allowing the use of the same spaces for corporate interests. There is a clear need for the courts to strengthen and rationalise the systems of environmental appraisal and clearance. Environmental approval committees should be given statutory status and appointed in a transparent manner to represent particularly the interests of the concerned masses rather than “technical corporate or bureaucratic interests”. The statutory appellate authority should also be transparently appointed through the judicial appointments commission.

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