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A rough justice

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The recent disclosure that the Chief Justice of India had recommended the impeachment of a Calcutta High Court judge for misappropriation of funds, along with earlier allegations surrounding the Ghaziabad provident fund case and money delivered at the residence of a judge of the Punjab and Haryana High Court, have highlighted the urgent need for a legal and transparent method for investigating misconduct of judges of superior courts.

Currently, the only legal method in the Constitution for disciplining Supreme Court and High Courts judges is removal from office by vote of Parliament for "proved misbehaviour". The framers of the Constitution made no provision for disciplining a judge of a superior court short of his removal, apparently believing that such cases would be rare. At the time, there were barely 60 such judges but now, sixty years later, there are over 700. Frequent and univestigated allegations of judicial misbehaviour sully the image of the judiciary.

In 1993, the unsuccessful attempt to remove a judge of a Supreme Court, Justice V. Ramaswamy, by Parliamentary impeachment showed how flawed, dilatory, and potentially political the impeachment process itself was. It also revealed an anomaly — there was no legal provision for suspending a judge from his duties whilst he was under investigation. Right now, there is only an informal and private method to deal with complaints of high-level judicial misbehaviour, as the Chief Justice of India has the complaint investigated by a committee of judges appointed by him. Previous investigations by such committees have not inspired public confidence as their proceedings are secret and their reports are not disclosed. Also, criminal prosecution of a judge of a superior court can proceed only with the previous sanction of the CJI in accordance with the Veeraswami judgment of the Supreme Court in 1992. The absence of any statutory provision to investigate such misbehaviour has resulted in the wrong impression that judges enjoy immunity. There is therefore an urgent need for a law to promptly address his misconduct. In December 2006, on the recommendation of the 195th report of the Law Commission of India, the Government introduced the Judges Inquiry Bill in the Lok Sabha to establish a national judicial council for this purpose. There were some shortcomings in the bill, but on the whole it was a step in the right direction and had the approval of the former CJI, Y. K. Sabharwal. The national judicial council, with the CJI chairing, two of the most senior Supreme Court judges and two chief justices of the high courts, would entertain a written complaint from any person involving an allegation of judicial misconduct.

If after a preliminary investigation, the judicial council finds no substance in the charge, it would be rejected outright but if it decides to conduct an inquiry it would frame definite charges against the judge concerned, who would have a reasonable opportunity of being heard. The inquiry would be completed within six months. During the inquiry, the judicial council may recommend stoppage of judicial work. If it is satisfied that the charges are proved but do not warrant the removal of the judge, it may impose other disciplinary measures — warnings, withdrawal of judicial work, or admonishment, public or private. If, however, the council is satisfied that the charges are serious enough to warrant removal, it would advise the president to do so and the president would then move Parliament.

The judicial council has no function in the criminal prosecution of a judge who is accused of crimes such as bribery and corruption. However, its findings can be used to sanction prosecution in major cases; the CJI, who, following Veeraswamy, is supposed to give sanction, is also the chairperson.

The bill was referred to a parliamentary committee. Its report, in August 2007, did not favour the exclusive functioning of the council for investigating misbehaviour. This criticism is not well founded. The suspicion that the a council composed of judges will shield their own fraternity is not justified. If a statutory body of the highest judicial functionaries in the country cannot be trusted, it is difficult to find any other body for this purpose. Suchcouncils have worked succesfully in the US and Canada, so why not here? A fresh proposal for a judicial inquiry council was recently put up to the cabinet, but has been deferred. The sooner Parliament passes the judicial inquiry bill, the better it will be for a clean and disciplined higher judiciary.

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