

MAKING THE JUDICIARY ACCOUNTABLE AND RESPONSIVE TO THE PEOPLE

Background paper for the 3rd National Convention on Judicial
Accountability and Reforms

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Since our last convention in 2008, our Campaign has made giant strides in bringing Judicial Accountability on the National Agenda and making it one of the most discussed issues in the media. This has been so on account of several highly publicized scandals which surfaced in the judiciary, which we used to bring home the problems of the lack of any credible mechanism to bring to book judges committing judicial misconduct as well as the lack of any transparent and rational system for appointing judges.

The **Ghaziabad Provident Fund Scam** surfaced almost two years ago when the vigilance judge of the Ghaziabad District Court reported to the High Court about how more than 7 Crores had been siphoned out of the Ghaziabad treasury by successive District Judges of Ghaziabad with the help of an administrative officer of the court, in the guise of Provident Fund advances to class 3 and 4 employees. The administrative officer of the Ghaziabad Court, Ashutosh Asthana made a confessional statement to the court that he had done this at the behest of successive judges of the district Court and that much of this money had been used for building the houses of the district judges, paying for various items of furniture etc. for them and for several High Court judges as well as a Supreme Court judge. Initially the Ghaziabad police investigating the case was told by the Chief Justice of India that they could not directly interrogate the High Court judges and that they must send only written questions to the judges, which must be sent through the CJI. Thereafter the Ghaziabad police expressed helplessness in investigating this case involving a Supreme Court judge, several High Court and District Court judges. On this the investigation was transferred to the CBI. More than 1 year thereafter, there is no information about the progress made by the CBI in the investigation. The fact however is that while several minor employees have been chargesheeted, no judge has been chargesheeted yet. Moreover, Ashutosh Asthana died in jail in mysterious circumstances which his family believe to be a murder.

The Ghaziabad provident fund scam however received a lot of publicity in the media which has strengthened the feeling about rampant corruption in the judiciary and the need to remove the unnecessary restriction

imposed by the Supreme Court by the Veeraswami judgment restraining the police from investigating criminal offences by judges without the prior written permission of the Chief Justice of the Supreme Court. This permission has almost never been given by the Chief Justice. In fact, he is recently reported to have refused permission to the CBI to prosecute Justice Nirmal Yadav of the Chandigarh High Court by saying that he cannot allow the spectacle of a High Court judge being arraigned before a Magistrate.

This scandal known as the “**cash at judges door scandal**” arose when a packet containing Rs. 15 lacs was delivered by a lawyer’s clerk to the security guard of Justice Nirmaljit Kaur. The packet was opened by the guard in the presence of the Judge in her living room where reportedly some other judges of that court and a judge of the Supreme Court were also present. The matter was reported to the police and soon the lawyer and his clerk were arrested. During preliminary investigation it transpired that the money was sent by a Delhi Hotelier called Ravinder Singh and was really meant for another judge by the name of Nirmal Yadav, but mistakenly delivered to Nirmaljit Kaur. The investigation was eventually handed over to the CBI. The case received a great deal of publicity and an inhouse inquiry committee of 3 judges was also constituted by the Chief Justice of India to inquire into the matter. This inquiry committee submitted a report on 6/12/08 and came to a clear conclusion that the money was sent by Ravinder Singh for Nirmal Yadav and was probably related to the purchase of land by her along with her relatives in Solan, Himachal Pradesh. The committee also found that she had committed various other irregularities, which were serious enough for the CJI to seek her explanation and resignation. She however sent a defiant reply effectively threatening to expose other judges of the High Court and the Supreme Court. Thereafter, the case has been effectively put in cold storage. The CBI also completed its investigation and found her guilty of various offences including forgery. Curiously however, the then Attorney General Milon Bannerjee was made to give a cryptic opinion that there was not a shred of evidence against Nirmal Yadav. The Law Minister also told the CBI that he had discussed the matter with the CJI and they felt that the case should be closed. The CBI was thus made to file a closure report before the Special judge. This is how even this highly publicized case of serious misconduct and criminal offences by a sitting judge is being sought to be buried.

While these cases were still festering, the controversy regarding the **disclosure of assets of judges** arose. It arose out of an innocuous query under the RTI Act, whether judges of the Supreme Court were disclosing

their assets to the Chief Justice under a code of conduct framed in 1999 by the judges themselves. The refusal to disclose this information by the Supreme Court by taking various incorrect and inconsistent stands before the Central Information Commission and then before the High Court, led to the snowballing of this controversy to a level that the resulting public embarrassment virtually forced the Supreme Court to announce that all the judges would put their assets on the Court website, which they eventually did though not with the desired specificity. This controversy saw the much ridiculed spectacle of the Supreme Court repeatedly appealing to the High Court and after being rebuffed there, threatening to appeal to themselves. This entire episode greatly contributed to the strengthening of the public impression that there were many skeletons in the judicial cupboard which the Apex Court wanted to hide. That some of these skeletons consisted of the manner of appointment of judges of the higher judiciary and dealing with complaints against judges, became clear from the alacrity with which the Supreme Court moved to appeal directly to itself against other orders of the CIC ordering the court to disclose information about appointment of some Supreme Court judges by superceding senior judges who enjoyed excellent reputations.

While the asset disclosure controversy was agitating public opinion came the news that the Supreme Court collegium had recommended **Justice P.D. Dinakaran**, the Chief Justice of Karnataka for elevation to the Supreme Court. Immediately after this became known, a group of highly respected and responsible lawyers from Chennai called the *Forum for Judicial Accountability* sent a series of representations to the Collegium and the government detailing several very damaging allegations against him. These included, acquiring more than 350 acres of agricultural land and encroaching on another more than hundred acres of public land; acquiring properties benami and far beyond his known sources of income; hearing and deciding cases of his friends etc. All the allegations were backed by unimpeachable documentary evidence. Though the Chief Justice of India, continued to back him, he ordered an inquiry into the allegation regarding his agricultural land by the District Magistrate, who confirmed the allegations including his encroachment of public land. Thereafter Justice Dinakaran tried to destroy evidence and threatened the revenue officials who went to stop this destruction of evidence. All this came to be widely reported in the media. An embarrassed PMO forced a reluctant Law Minister Mooly to return the recommendation to the collegium for reconsideration. The collegium did not withdraw the recommendation, but merely put it on hold. No “in house inquiry” was ordered either. Meanwhile people questioned how Dinakaran could continue as Chief Justice of Karnataka in the light of such serious

offences that he had committed. There was also the demand that FIRs should be registered and the offences that he had committed be investigated. The Chief Justice of India however did not give permission for registering any FIR against Justice Dinakaran. This left no option but to initiate impeachment proceedings against him. The Forum for Judicial accountability prepared the impeachment motion which was sent to all the political parties by a campaign for signatures. Eventually 75 MPs of the Rajya Sabha, belonging to many political parties except the Congress party signed the impeachment motion and presented it to the Vice President. The motion was soon admitted by the Vice President forcing Justice Dinakaran to stop discharging judicial functions.

The procedure laid down by the Judges Inquiry Act for proceeding with being impeachment motion is that the vice president appoints an enquiry committee consisting of a sitting judge of the Supreme Court, a Chief Justice of a High Court and a jurist to enquire into the charges against him. Only if the enquiry committee finds him guilty does the matter proceed further for a voting in the two houses of Parliament. The motion for his removal has to be then passed by a two third majority in each house. Only then can he be removed. Though there is no requirement under the Judges Inquiry Act for the Vice President to consult the Chief Justice in the choice of members of the enquiry committee, he consulted the Chief Justice, who recommended two judges of the Supreme Court and two Chief Justices of the High Court. Based on the Chief Justice's advice, the Vice President has appointed an inquiry committee comprising of Justice V.S. Sirupurkar of the Supreme Court, Chief Justice A.R. Dave of the A.P. High Court and Shri P.P. Rao as the jurist.

Our Campaign as well as the Forum for Judicial Accountability have however written to the V.P. pointing out that Justice Sirupurkar has not only been a close friend and colleague of Justice Dinakaran, but he has also prejudged the issue, telling several responsible lawyers that he knows Justice Dinakaran well and that he is an independently wealthy and honourable man. Moreover, Shri P.P. Rao had been formally consulted by Justice Dinakaran on how he should deal with these charges and that he had advised him on the matter. In these circumstances, they would not be seen to be impartial and therefore should not sit as judges on this inquiry committee to avoid damage to the credibility of the inquiry and further controversy. However till the date of writing they have not yet recused themselves.

These scandals have not only brought the neglected issue of Judicial Accountability centre stage, but have also brought the focus on Judicial

Appointments, complaints against judges and transparency in the judiciary. There is virtually universal acknowledgement that the present systems for appointments and dealing with complaints are unsatisfactory and need to be comprehensively overhauled. The government has also been forced to acknowledge this and has promised to bring a comprehensive bill for judicial Accountability. However, the bill that has been prepared by the government falls far short of what is required. It only tinkers with the present system by effectively giving statutory status to the inhouse procedure which had been evolved by the judiciary itself. What we need is an independent, full time Constitutional body which must be set up and empowered to deal with complaints against judges and take action including removal of judges found to be misconducting themselves. Similarly we need an independent, full time, Constitutional body for appointment of judges. One way of selecting these bodies would be as follows: The Chairman selected by a collegium of all the sitting judges of the Supreme Court. Another member selected by a collegium of all the Chief Justices of the High Courts. A third member selected by the Union Cabinet. A fourth member selected by a committee of Leaders of opposition in the Lok Sabha and Rajya Sabha, the Lok Sabha Speaker and the Vice President. A fifth member by a committee of Chairman NHRC, Chief Election Commissioner, Chief Vigilance Commissioner and the Comptroller and Auditor General. Once appointed, each member would have a fixed tenure and would be independent of their appointing authorities. Of course these commissions would have to lay down proper and transparent criteria and procedures for appointments and dealing with complaints. The time has come for us to suggest clear principles for the constitution and functioning of these bodies and then build public opinion which will compel the authorities to bring about these reforms.

Another serious problem we have been observing in the functioning of the judiciary is it's increasingly elitist and anti poor ideology and attitude with is totally against the letter and spirit of the Constitution. This has resulted in the judiciary trampling on the rights of the poor to live with dignity, a right that has been held to be part of Article 21 (the right to life and liberty). Thus the Constitutional validity of patently draconian laws like POTA, TADA and the Armed Forces Special Powers Act which have primarily been used by the State to harass the poor have been upheld and laws to protect rights of innocents like the Illegal Migrants (Determination by Tribunals) Act have been struck down allowing the police unbridled powers to incarcerate and throw out anyone from the country without even the benefit of determination of their nationality by any Judicial body. Laws to protect the rights of labour enacted and interpreted over the decades of the seventies and eighties have been

systematically dismantled and made into a dead letter during the last 10 years or so. The shelters of lakhs of jhuggi dwellers have been callously ordered to be demolished by the Courts leaving them on the streets, by saying that jhuggi dwellers are like pickpockets. Laws and executive acts which are clearly in violation of the directive principles of State policy and even fundamental rights have not only been upheld but encouraged by the Courts which have begun to behave like instrumentalities of large Corporations.

In these circumstances, it has become urgent and imperative, not only to put in place proper systems of accountability, but proper systems of selection of judges which will ensure that only those persons come to be appointed who are in tune with the egalitarian Constitutional philosophy and ideology and who have some sensitivity and understanding of the problems of the common people of the country.

The 3rd Convention comes at a time when there is enormous ferment in the country around these issues. It comes at a time when on the one hand, there is an unprecedented assault by the State on the rights of the poor, including a war on Tribals, in order to facilitate the corporate loot of natural resources; but there are also many spirited movements resisting this assault. The time is ripe for us to expand this resistance and bring it to bear on the judiciary which is a critical element and institution in this tussle between the people and predatory corporations.