

BACKGROUND PAPER FOR PANEL DISCUSS
ON JUDICIAL ACCOUNTABILITY – APPOINTMENT,
INVESTIGATION & REMOVAL
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The recent judicial scandals of Ghaziabad, Chandigarh and Calcutta, involving many judges of the higher judiciary, have aroused a great deal of interest in corruption in the higher judiciary and in holding judges accountable.

In particular, these 3 cases highlight at least 3 major problems which plague the system of appointments and enforcing accountability in the higher judiciary.

1. The system of appointments:

The Soumitra Sen case, illustrates how persons with dubious records and backgrounds are able to get through and be appointed in a totally arbitrary and opaque system of appointments. Sen had misappropriated Rs. 33 lakhs which he received as court receiver between 1993 and 1995 – a fact which was obviously known to officers of the Steel Authority of India – and yet he was appointed a judge of the Calcutta HC in 2003. His background was overlooked perhaps because those who knew about it did not come to know of his proposed appointment. Today the process of appointing judges of the higher judiciary is not only mainly non-transparent and secretive but also suffers from arbitrariness, which allows free play to nepotistic considerations. No criterion has been laid down for selecting judges. No methodical or objective evaluation of proposed appointees is done on any criteria. The selections are made arbitrarily by a collegium of a few judges which allows nepotism to flourish and dubious backgrounds to be overlooked.

The time has perhaps come to put in place a permanent full time body which selects judges in an objective, scientific and transparent manner. Perhaps, we also

need a confirmation process similar to what takes place before the US senate sub committee.

2. The Veeraswami judgment and investigation of Judges

All the three cases mentioned above, involve the commission of criminal offences by Judges of the Higher Judiciary. All of them therefore need a thorough criminal investigation and perhaps prosecution of those Judges. Though Soumitro Sen's case involves criminal misappropriation of money, the recommendation so far is only for his impeachment (which may lead to his removal). No steps have been taken for a criminal investigation and his prosecution despite the in-house committee of Judges having arrived at the finding of criminal misappropriation several months ago.

In the Ghaziabad Provident fund scam, the Nazir, the main accused in the case, has named several Judges of the High Court and one of the Supreme Court as beneficiaries of these misappropriated funds, in a confessional statement, as far back as in April. Yet five months down the line, the Judges have not yet been properly interrogated and the Chief Justice of India has only allowed the police to send them written questions. In the Chandigarh case, however, it appears that the Chief Justice has given permission to investigate two Judges. However, it appears that the clerk of the lawyer who delivered Rs.15 lakhs at the door of one of the Judges has, in a statement, named several other Judges to whom he had delivered money in the past. This will require another application by the CBI to investigate the other Judges named.

In 1991, the Supreme Court in Veeraswami's case, laid down that no Judge of the higher Judiciary could be investigated without the prior written permission of the Chief Justice of India. This was done on the basis that the government could use the police to harass the Judges through criminal investigations and thus compromise their independence. However there was no basis for such an apprehension since there had not been a single case till then of a Judge being harassed by any malafide investigation. In fact the police authorities are very apprehensive and reluctant to register FIRs against Judges of the superior Judiciary because they often have to appear before Judges in several cases, who have the power to pass various orders and

strictures against them. That is why the police, as stated by the SSP in the Ghaziabad scam, feels handicapped in investigating Judges of the Higher Judiciary. That is why even when the SP Noida reported to the then District Magistrate, Noida that Justice Bhalla had purchased property worth seven crores for five lakhs from members of land mafia who had several cases in courts under Justice Bhalla, the Noida police did not have the courage to seek permission from the Chief Justice of India for registration of an FIR against Justice Bhalla. The application of the Committee on Judicial Accountability to the Chief Justice of India for permission to register such an FIR against Justice Bhalla was also not acceded to. The time has perhaps come to put in place separate investigating machinery under a statutory Judicial Commission for the investigation of Judges of the Superior Judiciary. Such an investigating cell would not suffer the handicap of the local police and could work under the orders of an independent statutory body created to examine complaints against Judges.

3. Procedure for examining complaints against and removal of Judges

The failed impeachment of Justice Ramaswamy and the aborted impeachments of Justice M. M. Punchi, A. S. Anand and Subhashan Reddy have demonstrated the impracticability of the impeachment process. It is virtually impossible to have an impeachment motion signed by 100 MPs who are apprehensive of the consequences of their signing the motion on cases pending against them and their parties in various courts. Moreover the impeachment process is capable of being politicised and frustrated by deals between political parties and Judges as happened in the Ramaswamy case. The attempt being made in the Judges Inquiry Bill to institutionalise what is called the in-house procedure to investigate complaints against Judges has several serious problems. Even the Parliamentary committee had recommended several amendments to the Bill. In the first place, an in-house committee of three senior sitting Judges or Chief Justices, if and when constituted, would disrupt the functioning of at least three courts. That is why we need a full-time body to do this work. Moreover, sitting Judges often find it embarrassing to investigate complaints against brother Judges. On top of it, the Judges Inquiry Amendment Bill requires every complainant to swear an affidavit in support of his complaint and

disclose the source of every information in his complaint. Also the in-house committee can also send the complainant to jail if they find his complaint frivolous or vexatious. Such Draconian provisions would deter even honest and bonafide complaints. Moreover even after this committee of Judges finds a Judge guilty, the most the Chief Justice of India can do is to recommend the Judge's impeachment which will again have to be voted in Parliament. The bill also provides an appeal of the Judge to the Supreme Court even after removal by Parliament. All this will take years. Clearly the time has come to put in place an independent and full-time National Judicial Commission to receive complaints and investigate charges against Judges. Such a commission shall be independent of the government and the Judiciary and should have an independent investigative machinery under their control.

These are momentous issues which need to be discussed, and public opinion created, so that it forces the authorities to bring about the necessary changes in the Constitution and the laws and set up the institutions required. Judicial accountability is no longer just an issue which can be left merely to those in the Judiciary are called 'experts', most 'experts' have developed a vested interest in the present system and are unwilling to seek to change it.
