

**JUDICIAL ACCOUNTABILITY**  
(BACKGROUND PAPER FOR THE CONVENTION JUDICIAL ACCOUNTABILITY  
TO BE HELD ON 26 JULY 2003)

Anyone who has had the misfortune of having to approach the Courts to get justice, would know that the judicial system in this country has collapsed. There are repeated adjournments of cases for years altogether. Cases take generations to be decided. Even when they are decided, very few people come away with the feeling that Justice has been done. In many cases, judges have a poor understanding of the basic principles of law, equity and Justice. And now we are seeing the increasing Spectre of justice being bought and sold in courts across the length and breadth of this country. The collapse of the system of justice in the country, inevitably undermines the rule of law and leads to the breakdown of law and order. This is essentially what we are seeing in this country. The weak are at the mercy of the powerful and those who are in power are looting and plundering the country without any check or restraint. Naturally the rich and the powerful, particularly those who are in authority have little interest or incentive to reform the judicial system and make it work. It is they were enjoying the fruits of a collapsed judicial system. It is therefore only the common citizens, who are the consumers of justice in this country who will have to build a powerful movement for judicial reforms.

There are several reasons for this collapse, many of which have been studied and solutions proposed by successive Law Commissions in this country. One of the key problems is the system of appointments of judges which is completely arbitrary and nontransparent. This has led to a large number of undesirable persons getting appointed for nepotistic and as is now often said, for corrupt reasons. The spate of judicial scandals erupting in quick succession all over the country, have now focused public attention on the integrity of the judiciary, which is indeed one of the key reasons for the collapse of the judicial system.

That there has been corruption in the judiciary for many years, is clear from the famous case of K. Veeraswami who was virtually caught red-handed in 1974, while he was Chief Justice of the Madras High Court. His case however is to a large extent responsible for the lack of exposure of corruption in the judiciary till the recent scandals. In Veerasamy's case, the Supreme Court laid down that no criminal investigation of any kind against a judge could be taken up by any investigating agency without prior permission of the Chief Justice of India. This restraint, the court held, was necessary to protect the judges from harassment by the executive who control the investigating agencies. Over the last 12 years since the Veerasamy judgment, no Chief Justice has ever given permission to investigate a sitting judge of a High Court or the Supreme Court, obviously not because there has been no corruption in the judiciary. The judiciary might

say that this is because no permission has been sought thus far by the investigating agencies to investigate any judge. The fact however is, that investigating agencies would be extremely reluctant to approach any Chief Justice for permission to investigate a judge, unless they already have good evidence against him. And how can they have any evidence, till they investigate the judge. This has led to the Catch-22 situation, whereby judges have escaped scrutiny altogether.

In Shamit Mukherjee's case, the CBI got the evidence against him by chance, though they were not investigating him. During the investigation of the DDA officials, they had tapped the phone of the middleman Dharamvir Khattar. While listening to his phone, the CBI found and recorded many calls to and from Shamit Mukherjee. The nature of the conversations left no doubt of a brazenly corrupt nexus between the two and other DDA officials. With this evidence, the CBI approached the Chief Justice of India. The Chief justice confronted Mukerjee with this evidence, who had little option but to resign since he had not yet been confirmed as a judge. After he ceased to be a judge, there was no impediment to investigate or arrest him. It is learnt that the CBI has come upon some evidence involving other judges as well in the course of the same investigation. However, they are reluctant to approach the Chief Justice for permission to directly investigate the judges till they have a foolproof case against them. This obviously is not easy unless you're directly investigating the judges.

One reason why judges have been treated as untouchable in this country is because of the power of contempt wielded by them. This is a jurisdiction in which a judge against whom an allegation has been made can himself act as the complainant, prosecutor and judge. The judge can even refuse to allow the maker of the allegation to prove its truth. The very existence of this power has been enough to silence the media and inhibit them from exposing judicial misbehaviour or corruption. The amendment recently moved in Parliament to make truth a defence in a contempt action is not an adequate safeguard for the citizens and the press. As the case involving the journalists who wrote about the Karnataka sex scandal shows, though the allegation may be made bona fide and on a reasonable basis, it may not always be possible to prove its truth. This could be because the witnesses are won over or the evidence disappears for some other reason.

In fact there is no reason for this power to punish for contempt for "scandalising the court", to be conferred on the courts. It does not exist in the US, where this power can only be exercised where there is a clear and present danger to the administration of justice. It is often argued that this power is required to deter scurrilous attacks on the judges. But the law of civil and criminal defamation is adequate to do that. There is no need for such extraordinary powers for judges.

The Ramaswamy case has demonstrated clearly that impeachment is not a practical remedy to discipline errant judges. The very initiation of that process involves drawing

up charges against the judge which have to be signed by a hundred MPs. How can MPs signed the chargesheet without evidence, and how can evidence be collected without investigation, which is practically impossible in the present state of affairs. It was therefore clearly recognised immediately after the Ramaswamy case that we need another system for disciplining judges.

For a longtime now, people have talked of a National Judicial Commission which will have the power to discipline judges, but successive governments have failed to draft and bring that Bill. It is only now, faced with a string of highly publicised scandals, that the government has hurriedly introduced a bill for creating a National Judicial Commission. In the government's draft Bill however, this Commission would consist of the three senior judges of the Supreme Court, the Law Minister and a nominee of the Prime Minister. This is hardly the kind of independent body that is needed to bring accountability within the judiciary. This Commission suggested by the government would be controlled by the judiciary and some of its power would be wielded by the government. This neither has the merit of creating an independent watchdog body, but has the demerit of making the government an active player in controlling the judiciary. This proposal, would compromise the independence of the judiciary, without bringing the desired accountability.

The Committee on Judicial Accountability, had more than six years ago prepared a draft bill for the National Judicial Commission, which provides for a five-member commission consisting of five retired judges or senior advocates who will have security of tenure, which will make them independent of the government as well as of the judiciary. The chairman would be nominated by Collegium of all the judges of the Supreme Court. Another member would be nominated by Collegium of all the Chief Justice of the High Courts. One member would be nominated by the government. One, by the leader of opposition in the Lok Sabha. The last, by a Collegium of all the members of the Bar Council. However all members would function independently of the nominating bodies, since they would enjoy security of tenure, like judges of the High Court of the Supreme Court. Such a body exercising disciplinary powers over judges of the High Court and Supreme Court, could be expected to bring about some accountability in the judiciary without compromising its independence.

According to the draft bill of COJA, this commission would also select judges for appointment to the High Court and the Supreme Court. In order to bring about a measure of transparency in the system of appointment, it was proposed that before an appointment is finally made, the proposals would have to be notified for public information so that persons having any relevant information about the nominee's background could supply that information to the commission. This would in many cases, prevent appointment of dubious persons who are able to get through, because people who know their dubious past are unaware of their proposed appointment before it is actually made.

The National judicial commission according to the proposal of COJA would be a full-time body which could devote adequate time to the appointment of judges and dealing with complaints against judges. The government's proposal of having ex officio members would hardly serve the purposes they would not have adequate time to devote to these important issues. COJA's proposal, also provides for a permanent investigate the machinery under the control of the commission. This is necessary so that the commission could get the antecedents of proposed appointees, as well as complaints against judges investigated through this body which would be under its administrative control.

It is trite to say that the judicial system in this country is in a state of collapse. Many of the solutions necessary to remedy this problem have been suggested by the successive Law commissions and have been known to successive governments. However those in power have little incentive to reform the judiciary, since they do not need the judiciary to get justice. They have the power of authority. It is the poor and the weak and the helpless who usually need the courts to get justice, often against those who are in power. It suits a corrupt executive to have a corrupt judiciary. The corrupt judiciary is hardly likely to hold a corrupt executive to account. They would both be content with a system of loot and share. Unless there is a strong movement of citizens, who are the consumers of justice, for judicial reforms, we are hardly likely to see any serious judicial reforms in this country.

This is why it has been decided to convene this National Convention on judicial accountability. The participants in this Convention are expected to represent all sections of civil society and consumers of justice including lawyers, judges, journalists, workers and indeed all sections of society. We hope that the deliberations of this Convention would lead to a People's movement for judicial reforms in general and for accountability of the judiciary in particular, so that the administration of justice in this country can be put back on the rails and the rule of law once again prevails in this country.