

# Status Report

*Campaign for Judicial Accountability and Reform*  
2008 – 2009

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The *Campaign for Judicial Accountability and Reform (CJAR)* was launched in March of 2007 with a two-day National People's Convention on Judicial Accountability and Reform, organized in New Delhi. The Campaign had already been active, albeit under a different name (The Committee on Judicial Accountability), on issues of accountability and transparency in the Indian judicial system for almost a decade prior to this first convention. It was however felt there was a need to reach out to the common citizen outside the legal fraternity, for the Campaign to be a more inclusive and an effective instrument of change. The Campaign reached consensus that proper accountability and transparency in the Indian Judiciary could only become a reality if the common people, especially the poor, who were adversely affected by the judicial system, came together and raised their voice against the elitist, anti-poor, opaque and unaccountable judicial system. Since CJAR was envisioned as a response of organizations, individuals and larger peoples movements to a judicial system that was and remains largely unaccountable, inaccessible and insensitive to the poor, it thus began to work with and represent the voices of the common people of this country.

Since its inception, the Campaign has been actively lobbying for change and reform in the judicial system. It has striven and succeeded in highlighting the **several serious problems** that plague the Indian judicial system including:

- its lack of accountability
- its inaccessibility by the poor and marginalized
- the adhoc and arbitrary appointment of judges
- its elitist and anti-poor bias
- the lack of proper redressal mechanisms to address grievances against judges
- inordinate delays in deciding matters
- it's inherent and pervasive lethargy
- increasing cases of judicial corruption

In **March 2007, through the First National Convention**, the Campaign resolved to encourage people's organizations and movements all over the country to initiate a sustained public campaign to reclaim the judiciary for "We the people" of this republic. Thereafter several people's organizations, non-governmental organizations, citizens groups and individuals have endorsed the Campaign for Judicial Accountability and Reform and launched a sustained people's campaign. These various organizations and movements include human rights organizations, housing rights organisations, unorganised labour organisations, organisations working for the right to information and transparency, women's rights organisations and various other citizens groups and individuals.

**The Second National Convention** with the theme “*The Judiciary and the Poor*” in February 2008 analyzed the structure, functioning, the actions and the attitude of the judiciary, particularly towards the poor and highlighted various structural changes that are required to fundamentally change the working of the judiciary so that it becomes responsive to the rights of the poor and the common citizen. Again, a large number of people’s movements, grass roots organizations and individuals concerned about the state of the judiciary participated in the convention. It was resolved that the people of this country have to take stock of the present state of the judicial system and in particular the manner in which the judiciary has become an instrument of harassing the poor rather than an instrument for protecting their rights and giving them justice. This it was resolved would be done by making a concerted effort to support all the activities of the campaign in bringing to surface the rot at the bottom of the judicial system.

With this renewed commitment CJAR continued to work through the year 2008 into 2009.

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### ***Activities undertaken in the year March 2008 – April 2009***

The Campaign has a **working group** that meets every fortnight to discuss the Campaign’s activities, action and the way forward. The Campaign website is regularly updated with news and events on the judiciary along with reports on the Campaign’s activities and updates and invites to forthcoming events.

Regular working group meetings were held during this period which continued to provide impetus and direction to the campaign as members engaged in discussion on recent developments in the judicial arena. The working group meetings were often frequented by peoples groups engaged with communities on diverse issues and even spirited citizens concerned about the state of the judiciary in general or those who have been adversely affected by its functioning. This was seen as an effective way to hear and respond to the needs of these groups and incorporate their issues into the working of the Campaign.

#### **1. Ghaziabad Public Provident Fund Scam (February 2008)**

In early 2008, the Campaign came across information to suggest that a scam worth more than Rs.7 crores was being conducted in the District Court in Ghaziabad. From a perusal of the documents in our possession it appeared that large sums of money were being fraudulently withdrawn from the Ghaziabad Treasury in the guise of Provident Fund advances to Class III and Class IV employees. Transparency International decided to intervene with the support of the Campaign for Judicial Accountability, seeking a thorough investigation of the matter by the Police or the CBI and a removal of the fetters placed on the investigation by the Chief Justice of India through the Registrar of the Supreme Court. Continued pressure on the Judiciary through various public actions and continued media engagement has

resulted in the investigation being handed over to the CBI and some headway in the investigation.<sup>1</sup>

2. **Panel Discussion on Judicial Accountability – Appointments, Investigation and Removal - (17<sup>th</sup> September 2008) :**<sup>2</sup>

The judicial scandals of Ghaziabad, Chandigarh and Calcutta, involving many judges of the higher judiciary, called for great concern regarding corruption in the higher judiciary and in holding judges accountable. These developments indicated a deep rooted malaise in the judiciary. As each scandal is exposed, the response of the establishment has been to think of ways and means to hide the problem from public view and thereby seek to protect the image of the judiciary as well as public confidence in it.

CJAR organized a Panel Discussion on Judicial Accountability to discuss the three major problems which plague the judicial system and inhibit enforcing accountability in the higher judiciary, which were brought to the fore through these recent developments:

- **The system of appointments** – highlighted by the case of Justice Soumitra Sen of the Calcutta High Court.<sup>3</sup> The Sen case brings to fore the process of appointing judges of the higher judiciary, which is not only non-transparent, secretive and suffers from arbitrariness but 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 discussions focused on the need to have an independent Judicial Appointments Commission which shortlists and selects judges by following an objective method and transparent process. It was discussed, that the present system of a small Collegium of sitting judges selecting and appointing judges arbitrarily behind closed doors must be immediately replaced.

- **The Veeraswami judgement and investigation of judges** – The justification given in the Veeraswami judgement in not allowing the criminal investigation of a judge without the prior written permission of the CJI was that the executive could use the police to harass innocent judges and thus compromise their independence. However the letter of the SSP Ghaziabad in the PF scam case showed that the police is seriously inhibited from the investigation of judges even when there is adequate evidence against them. The Noida police did not even seek the registration of an FIR against Justice Jagdish Bhalla even after it had been found that he had purchased property worth 7 crores for a meagre 5 lakhs from land mafia who had several cases pending before him. The Veeraswami injunction against the registration of FIRs against judges

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<sup>1</sup> Refer to Annexure 1 for case details: Ghaziabad District Court Scam

<sup>2</sup> Refer to Annexure 2 for Background Paper and Resolution passed at the Panel Discussion

<sup>3</sup> Refer to Annexure 1 for case details: Justice Soumitra Sen, Chandigarh Cash at door scam, Ghaziabad Scam, Punjab and Haryana High Court scam, Recent government focus on judicial reforms

must therefore be scrapped and it is necessary to create a separate Judicial Bureau of Investigation under an independent (of both the government and judiciary) Judicial Complaints Commission which will have the power to order investigation against judges.

- **Procedure for examining complaints against and removal of judges** – The past failed and aborted impeachments of judges have demonstrated the impracticability of the impeachment process. MPs are reluctant to sign the motion having regard to the consequence on cases pending against them and their parties in various courts. The attempt being made in the Judges Inquiry Bill to institutionalize the in-house procedure to investigate complaints against judges has the following serious problems:
  - The three sitting judge committee would disrupt the working of at least 3 courts, therefore a full time body is needed.
  - Sitting judges often find it embarrassing to investigate complaints against brother judges
  - The Amendment Bill requires every complainant to swear an affidavit in support of his complaint and disclose the source of his complaint
  - The committee can also send the complainant to jail if they find his complaint frivolous or vexatious
  - Despite this if found guilty the CJI has to recommend impeachment

### **3. Two Student Workshops on Judicial Accountability and Reform: (18<sup>th</sup> October 2008 and 7<sup>th</sup> February 2009)**

As stories of judicial misconduct and corruption flooded media channels and newspapers, CJAR began receiving regular emails from various groups regarding the Campaign's response. Key among these were students who wanted to get involved while expressing concern regarding their lack of awareness regarding the issues involved.

CJAR hence organized two student workshops inviting students from various colleges in and around the Delhi University to participate. The workshops were attended by over 60 students each time. Various prominent speakers addressed the students on the overall issue of judicial accountability, the judiciary and the poor, the Judiciary and the RTI, etc. Students keenly participated and expressed their desire to contribute to the campaigns activities in various ways.

Student participation in various campaign activities has however been quite thin, many voicing apprehensions while choosing to be silent informed spectators.

The Campaign continues to reach out similarly to other stakeholders and build awareness among them.

#### **4. Judicial Reforms in political manifestoes (January 2009)**

Several far reaching reforms are required to overhaul the judicial system. Many of these have been recommended by successive Law Commissions and other expert bodies. Unfortunately the government and the judiciary have not shown the political will to implement them. With the general elections approaching and national parties gearing up with their election manifestoes, in January 2009, CJAR along with the Janhit Manch, Mumbai, wrote to various political parties to include the issue of judicial reforms in their party manifestoes. CJAR also sent suggested proposals for incorporation. Some political parties included the issue of judicial reforms in their party manifestoes.

#### **5. Impeachment motion against Justice Soumitra Sen (January 2009)**

Justice Soumitra Sen of the Calcutta High Court has been recommended to be removed by impeachment by the CJI, for the offence of misappropriating funds received by him as court receiver and thereafter for giving false explanations to the High Court.

The CJI had made the recommendation of impeachment after a report of a committee of three judges came to the conclusion that he had committed several acts of serious misconduct. Though the report of the judges committee was submitted in early 2008 and the Chief Justices recommendation for removal by impeachment of Justice Sen was made in August 2008, the government till early 2009 had not made any attempt to proceed with his impeachment.

Hence in January 2009 CJAR wrote to the MPs of the Rajya Sabha sending them a prepared impeachment motion and urging them to sign the motion so that it could be presented to the Chairman of the Rajya Sabha for proceeding with his impeachment.<sup>4</sup> In response to our recommendation the CPM took up the initiative and got the impeachment motion signed by above 50 Rajya Sabha MPs and submitted it to the Vice President who has in consultation with the Chief Justice of India appointed a 3 member panel headed by Justice Sudershan Reddy, under the Judges (Inquiry) Act, 1968.

#### **6. Open Letter to judges and Public Action on issue of Disclosure of Assets by judges (February 2009)**

It has always been a matter of debate in the country whether judges of the Supreme Court and High courts should disclose assets and liabilities. While the Apex court judges voluntarily file a statement about their assets and liabilities with the Chief Justice of India, statements are not made public. The rationale given by the Supreme Court for the need for disclosure of assets of candidates contesting elections would equally apply to all public servants occupying crucial positions of authority. In any case, with the Right to Information Act, 2005, now in place, it is clear that the disclosure of assets by Public Servants to the Government or to any other authority would be accessible to the citizens under the RTI Act.

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<sup>4</sup> Annexure 3: Notice of motion for the removal of Justice Soumitra Sen & Letter of the CJI to the Prime Minister dated 4<sup>th</sup> August 2008, seeking removal of Justice Sen

The Chief Justice of India went on record to say that while all the judges of the Supreme Court have made a disclosure of their assets to him in confidence, he cannot disclose them publicly. Thereafter the Chief Information Commission directed that the information on declaration of assets by judges to the CJI must be disclosed. Unfortunately, instead of complying with the orders of the highest statutory body on Right to Information, the Supreme Court chose to challenge this in the High Court, leading to an unseemly spectacle.

With the backdrop of a legal tussle over disclosure of assets by judges, on the **13<sup>th</sup> of February 2009**, CJAR wrote an open letter to judges of the High Courts and the Supreme Court to set an example for public servants by voluntarily making public disclosure of their assets.<sup>5</sup>

On **26<sup>th</sup> of February 2009**, CJAR organized a silent public protest urging judges to make their assets public and put an end to the embarrassing controversy. The protest was held opposite the Supreme Court, in front of the Indian Law Institute, Delhi. The demonstration was a great success and was joined by around 200 activists, concerned citizens and mass organizations working with various people groups. It was believed that the show of strength and public concern would further exert pressure on the judges of the Supreme Court and High Courts to publicly declare their assets.

#### **7. Press Conference on controversies relating to appointment and removal of judges (19<sup>th</sup> January 2009)**

A string of judicial scandals surfaced in quick succession during the past year, namely, the Ghaziabad PF scam, cash-at-judges-door scam, the case of Justice Soumitra Sen, etc. All these cases highlight the very serious problem with the present system of selection, appointment and removal of judges.

On the 19<sup>th</sup> of January 2009, the CJAR held a press conference to address the recent controversies relating to the selection, appointment and removal of judges. The Press Conference was addressed by Admiral R.H. Tahiliani (Former Chief of Naval Staff & Director, Transparency International, India. Admiral and Mr. Prashant Bhushan (Convenor CJAR and Advocate Supreme Court of India). The Conference addressed the case of Justice Soumitra Sen's impeachment, the recommendation for appointment of Mr. Ashwini Kumar Mata as judge of the Delhi High Court and the case of disclosure of assets by judges of the High Courts and Supreme Court.

The problem with the lack of transparency in appointment of judges was exemplified by the proposed appointment of Mr. Mata as Judge of the Delhi High Court. CJAR pointed out in its representation to the Supreme Court and High Court collegiums, the misconduct of Mr. Mata in his complicity in forging signatures in a house deal. It was further pointed out that even if it is not certain that Mr. Mata participated in the forgery of his agreement with the builder, it would be better to err on the side of caution by not appointing him, instead of being faced with a situation as that with regard to Justice Soumitra Sen of the Calcutta High Court.

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<sup>5</sup> Annexure 4: Open Letter to judges on disclosure of Assets