

## **CJAR 3rd National Convention on Making the Judiciary Accountable and Responsive to the People - 6th February 2010**

The Third National Convention of the Campaign for Judicial Accountability and Reforms (CJAR) was flagged off today on the Issues of Judicial Appointments, Complaints against judges, Contempt of Court and the application of the RTI to the Judiciary. The Convention titled ***Making the Judiciary Accountable and Responsive to the People***, provided a platform to not only lawyers, former judges, but also to academics and social activists, who were unanimous in a view that it is important to devise ways and means to make the Indian Judiciary accountable and responsive to the People of India. This, it was emphasized should not be allowed to be diluted by bringing forward the arguments of Judicial Independence.

Among the persons who addressed the convention today, were Justice JS Verma, Mr. Shanti Bhushan, Mr. Anil Divan, Mr. Arun Jaitley, Mr. A.B. Bardhan, Arvind Kejriwal, Nikhil Dey and Manoj Mitta, Indira Unnayar and Mr. Basant K. Choudhary.

In a show of unanimity, the political speakers for the day arrived at a convergence of views on the drastic need for judicial reforms and the broad direction that it should take. Mr. Arun Jaitley, Mr. A.B. Bardha, Mr. Shanti Bhushan and Mr. Anil Divan along with the former Chief Justice of India, Justice J.S. Verma, were unanimous in their prognosis that the present system of appointments to the Higher Judiciary by a collegium of judges has proved to be an utter failure. However at the same time it was agreed that there was no question of going back to giving primacy to the executive in the matters of appointment and disciplining of Judges.

Justice Verma stated that Judicial Independence is in fact just a facet of accountability. Both Justice Verma and Mr. Shanti Bhushan agreed on the need to overrule the Veeraswamy Judgement which protects judges from criminal investigation without prior written approval from the Chief Justice of India.

While Mr. Shanti Bhushan narrated why Chief Justices of India have not given consent for investigation even when the material in the public domain clearly called for such an action to be taken, Justice Verma went on to add that during his tenure as the CJI when he himself demanded from successive Prime ministers for such an action to probe the allegations against some judges to be initiated, it was not acted upon by the Government. He was referring to the allegations against a senior Judge at that time who subsequently became Chief Justice of India.

Mr. Arun Jaitley, narrated his first hand experience as a law minister that there had been instances during his tenure where candidates with dubious records and adverse reports from official agencies, were sought to be recommended. In some of these cases the Government returned their files along with detailed notings. Yet such candidates were again recommended and the government had to per force appoint them. Mr. Jaitley also stated that he was earlier of the view that

issues relating to appointment of judges should not be accessible under the RTI Act. However after seeing such instances, changed his views and now feels that it is only when such matters are placed in the public domain will the collegium be forced to record cogent reasons for appointment. Such a requirement itself would act as an effective deterrent against wrongful appointments.

A.B.Bardhan said that the issue of judicial reforms is above politics and that he fully supports the suggestions made by Arun Jaitley that there should be a Constitutional amendment to have a commission to appoint and discipline Judges and in no way should the executive be again given a dominant role in the appointment of Judges.

Mr.Prashant Bhushan emphasized the need for a full time body as opposed to an ex officio body of sitting judges or ministers who would be unable to devote adequate time to do a rational and professional job.

In the session on complaints against and removal of judges, Mr.Shanti Bhushan pointed out that disciplinary jurisdiction over judges cannot be left to an in house body of judges since Judges regard themselves as a family and feel that exposure or action against any one of them will bring down the reputation of the entire family.

While Justice Verma and Mr. Anil Divan agreed for the need for a full time, independent, judicial complaints commission, Justice Verma felt that the task of adjudicating on judges misconduct, should be left to a body of Judges.

The Convention highlighted the fact that in spite of having consistently championed the right to information in the past, the judiciary itself now demands legislative fetters on the RTI vis a vis itself. A common view was that the judiciary, which has become one of the most powerful institutions of governance in the country, should be far more accountable and transparent.

Mr. Arvind Kejriwal cited instances of how important issues often fail to get Judicial attention and it is not known on what basis the Judiciary hears and lists cases. Mr Nikhil Dey talked about the right to justice being an undeniable right in a democracy and apart from addressing the problem of denial of access to the common man, there needs to be far greater transparency and accountability.

The Convention brought forth the notions that the Judiciary has become connected with, and responsive to the rich and powerful and disconnected from and insensitive to the common people. To this end, while Mr.Bardhan was not in favour of reservation in the higher Judiciary, he felt that appointments to the judiciary must take into account the awareness and sensitivity of Judges to the needs of the deprived sections of this diverse country.

Manoj Mitta pointed out the absurdity of the law of criminal contempt regarding scandalizing the Court which has become obsolete even in England, and does not exist in most enlightened democracies. He pointed out that even the amendment which provided for truth being a defence, says that it “may be” considered to be a good defence if, in the opinion of the court, it is in “public

interest.” Leaving it open for rampant abuse by the judiciary which sits as Judges in their own cause.H

There was virtual consensus among participants that an Independent, full time, national Judicial appointments commission be setup as a constitutional body, the membership of which would include eminent members of Civil Society as well as retired judges. The present system of appointments by the collegiums has failed, just as the earlier system of appointments by the executive had failed. Sitting judges or ministers do not have adequate time to do thorough, professional and objective job in selecting judges. A comparative study of the system of appointment of judges especially of the higher judiciary was presented by Ms. Indira Unnayar which highlighted that in India sorely lacks a proper and well defined procedure for appointment of judges with clearly defined criteria and transparency at all stages of the appointment process.