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EDITOR'S PICK**Judicial accountability as proposed under Judges Inquiry Bill, 2006***I. L. Prasanthi*

In India from times immemorial Judges have been held in highest esteem and revered as super humans. But of late there are instances of corruption infecting the judicial system also. There is a great danger that such instances can erode the faith that people have in the Judiciary. As a result judicial decisions might be looked upon with suspicion. The recent incidents in Bihar (like killing of an under trial in the court itself and lynching a suspected thief to death) point out that frustrated by the failure to get justice, people are slowly losing faith in Judiciary and are taking law into their hands. This is highly deplorable.

A need definitely is there to make Judiciary accountable, as derogation of values in Judiciary is far more dangerous than in any other wing of the government as Judiciary has to act as the Guardian of our Constitution. Judicial accountability or answerability of the Judges is not a new concept. Several countries in their Constitutions have already provided for ensuring accountability of Judiciary. This is to prevent concentration of power in the hands of a single organ of the state (especially in countries where judicial activism interferes with and invades into the domains of the other organs).

But at the same time Judicial Independence is a pre-requisite for every Judge whose oath of office requires him to act without fear or favour, affection or ill-will and to uphold the Constitution and laws of the country.

It is not that there is no provision for judicial accountability under our Constitution. As per article 124 (4) in case of proved misbehaviour or incapacity a Judge can be impeached in Parliament and removed from

Judges Inquiry Bill 2006 should be given a fair chance. The suggestions of Natchiappan Committee report may be incorporated to make the intended Act more meaningful. Judges should take the step in a positive spirit and not as an encroachment upon their independence.

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office by the President[1] upon an address by the Parliament. Again under Article 124 (5) Parliament is empowered to make laws regulating the procedure for presentation of an address and for the investigation and proof of the misbehaviour or incapacity of the Judge.

We have the Judges (Enquiry) Act 1968 where reference procedure could be initiated upon a Notice of Motion praying for removal of a Judge signed by in case of a notice given in the House of the People by not less than 100 members. In case of a notice given in the Council of States by not less than 50 members.

But the main lacuna of the 1968 Act was that there was no permanent authority to deal with the instances of misbehaviour. The impeachment procedure was also criticized to be time consuming, impracticable and allegedly politicized.

The Law Commission in its 195th Report of the Judicial Commission of India recommended that a Statutory Committee be appointed for the specific purpose of dealing with cases of deviant behaviour of the Judges.

The recommendations of National Commission to Review the Working of Constitution (N.C.R.W.C.) and alleged assumption of huge power by the Judiciary under aggressive judicial activism has led to framing of this Bill. The Bill draws heavily from the Law Commission recommendations[2] and is also inspired by Judicial Improvement Act 2002 of the United States of America.

The Bill proposes to devise a new complaint procedure under which any person may file a complaint in writing against any Judge of the High Court or the Supreme Court of India (except the Chief Justice of India).

The complaint can be filed upon the same earlier grounds but the Bill goes ahead to define them. Incapacity is defined as Physical or mental incapacity which is or is likely to be of a permanent character[3] and

Misbehaviour is defined as willful or persistent conduct which brings dishonour or disrepute to the Judiciary, or willful or persistent failure to perform the duties of a Judge, or willful abuse of judicial office, corruption, lack of integrity, or committing an offence involving moral turpitude and includes violation of code of conduct.[4]

The bill proposes establishment of a National Judicial Council which will be of permanent character and shall comprise of the Chief Justice of India as Chair Person and two senior most Judges and two Chief Justices of High Courts to be nominated by the Chief Justice of India as members.[5] Thus the Council shall consist purely of Judiciary (this is similar to its counterparts

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in US and Canada).

There are two ways in which proceedings under the Bill can be initiated. They are:

1. by complaint procedure
2. by reference procedure

Complaint procedure Under this procedure, an application can be filed by any person. The Council can also take applications from any other source.

The time limit to file the application is 2 years from the time when alleged misbehaviour took place. Under complaint procedure no proceedings can be initiated against the Chief Justice of India or against any Judge who has demitted his office.

If the complaint is found frivolous or not made in good faith; or without sufficient grounds for inquiry or if it relates only to merits of a judgment or a procedural order the complaint is liable to be dismissed.

In case of genuine complaints the Committee shall proceed and inquire. The Judge is given opportunity to defend himself. The burden of proof required here is beyond all reasonable doubt. The inquiry has to be conducted in camera and should be completed within six months time.

The Bill preserves the Reference Procedure as the other mode of initiating the enquiry process. This is more or less the same procedure as under the 1968 Act. If the enquiry finds that the case warrants removal of the Judge under section 21 (2) of the Bill such removal can be effected.

The Council is permitted to make three recommendations

1. Dismissal of complaint is recommended if the case is not proved.
2. If the Council is satisfied that the case is proved and that the case warrants the removal of the Judge, it shall advise the President accordingly. The President then puts the proposal before the Houses. If the motion is accepted in both the Houses as provided under Act 224 (4) read with article 218 of the Constitution; then the proposal is passed to the President who shall order removal of the Judge.
3. In the cases of complaint procedure alone the Council can recommend minor measures where it is satisfied that the case does not require removal of the Judge. These minor measures are

- . Issuing advisories
- . Issuing warnings
- . Withdrawal of judicial work for limited time (including already assigned cases also). request that the judge may retire voluntarily
- . Censure or admonition.

Appeal from an order from the Council can be made to Supreme Court of India by the aggrieved Judge under section 36. The Council is empowered to issue a code of conduct for the Judges. This code of conduct shall provide for periodic disclosure of assets by the Judges. The Restatement of Values of Judicial life adopted at the Chief Justices Conference of India 1999 shall be the code of conduct till the new code of conduct is issued under section 36.

The Bill provides confidentiality by making it an offence to disclose anything pertinent to the matter to anybody, unless the Council approves. Section 28 of the Bill provides that the name of the complainant may also be kept confidential, if such request is made by him. It shall not be disclosed even to the Judge. Section 33 provides (unless the council decides to disclose) an immunity to all documents of the proceedings from the Right to Information Act 2005 and other laws.

There are many views strongly in support of the Bill (i.e. judicial accountability). It is felt that this shall act as a check against the aggressive

nature of judicial activism leading to unnecessary interference in the province of the other organs by the Judiciary.

In India even healthy public criticism of the Judges is branded as contempt of court and penalized. So many fear to make even a fair comment about Judiciary or its judgments. Independence of Judiciary which is treated as a basic feature of our Constitution actually means independence of Judiciary from pressures of other organs of the state. But unfortunately, it is translated as independence of judiciary from accountability. All irksome questions are avoided by taking the defence that it compromises with the Judicial Independence.

The Supreme Court in Veeraswamis case[6] has declared that no Judge of High Courts or the Supreme Court could be subjected to investigation in any criminal offence of corruption or otherwise, unless one obtains the prior written consent of the Chief Justice of India. To take the permission of Chief Justice to start the investigation the police need very credible evidence. Such credible evidence can be found only when the investigation actually starts. With this the Judges have cloaked themselves with additional immunity.

The Judiciary is seeking to exempt itself from the applicability of the RTI Act 2005. The Supreme Court has said that the Chief Information Commission cannot direct the Judiciary to disclose any information. In fact Supreme Court recommended amendment to the Act so that any information interdicted by the Chief Justice of India on the grounds of independence of the judiciary will not be provided.

Under the Judges Inquiry Act-the inquiry report shall be looked into by a Committee consisting of sitting Judges. So even if one Judge disagrees, the report shall be shelved. In case the judge is found guilty by the committee-the case goes back to the executive and has to be passed by 2/3rd members of the Parliament which again runs the risk of politicization. It is only if the motion is passed that the President is obliged to remove the Judge.

In this background the Bill (and the intended Act) definitely is a positive step towards making the Judiciary accountable. But it can be made more effective and meaningful if some areas are tightened, leaving no room for any lacunae to be found later, only upon practical application. Some of the short comings of the intended legislation have been pointed out by a committee of leading lawyers[7] as under:

1. The committee of three Judges/jurists under the existing Judges Inquiry Act 1968 are to be selected by the Speaker and at least one of these three could be outside the sitting Judiciary. In the present Bill, the Judicial Council is an in-house Council of sitting Judges. It is highly unlikely that Judges in the Committee would be able to decide dispassionately-allegations against their own brother Judges whom they regard as part of their judicial family. In fact the complainant would be risking his neck and could be even sent to jail under the powers given to the Judicial Council as per Section 26 of the Bill.

2. The risk is even more as Section 33 of the Bill provides complete immunity to all documents of the proceedings from being disclosed (unless the Council decides otherwise).

It is therefore absolutely essential that the Inquiry Committee or the Council does not consist of sitting Judges but it must have persons from outside the judicial family. The Committee of leading lawyers instead recommended a Constitutional Amendment to put in place a five member National Judicial Commission consisting of the following members-

1. One member to be nominated by a collegium of all the Judges of the Supreme Court.
2. One member to be nominated by a collegium of all the Chief Justices of the High Courts.
3. One member to be nominated by a collegium of the Speaker, the leader of the opposition in the Rajya Sabha, the leader of the opposition in the Lok Sabha.

4. One member to be nominated by a collegium of Vigilance Commission, Comptroller and Auditor General and the Chairperson of the National Human Rights Commission. Thus the National Judicial Rights Commission will have five members nominated as above who would not be sitting Judges and would be full-time members having an assured tenure.

Mr. Justice Rajinder Sanchar former Chief Justice of Delhi High Court also pointed out some shortcomings in the Bill[8].

1. Questions concerning judicial integrity cannot be the preserve of a small in-house group. The Council should have at least one layperson as member. (This is on the lines of the composition in other Commonwealth countries like New Zealand, Canada, Australia etc.) In fact a large number of publicmen, academicians and intellectuals inspire the same confidence as Judges themselves.

2. Section 7 of the Bill doesn't provide for the investigation agency to be appointed independently by the Council. This deficiency is similar to what was pointed out by human rights activists with regard to powers of National Human Rights Commission.

3. The total ban on filing complaints against retired judges should be replaced with a time limit - say alleged misdemeanors committed up to three months before the date of retirement could be investigated. For sitting Judges two years could be the reasonable time limit.

4. The In-camera enquiry is also against principles of fairness. Judges conduct should be like an open book.

5. Section 20 requires that the charges must be proved beyond all reasonable doubt. Instead the test should be of probabilities as in a civil case. Judges cannot be demeaned by applying the test of criminal complaint.

6. The Bill provides that Judges can be impeached by simple majority of those present and voting as against the present Constitutional provisions of two-thirds majority. This means that Judges have to constantly fear the threat of impeachment by the Houses.

7. Section 30 provides that if an order for removal is passed by the President (which follows only after each House has held that the misbehaviour has been proved)-an appeal shall lie to the Supreme Court. No where in the world is there an appeal against the verdict of the Parliament. This provision should be deleted to preserve the delicate balance between the Judiciary and Parliament.

Some other suggestions for making the Bill (or intended Act) more meaningful-

. Members of Bar who are required to appear before the Judges every day may not venture out to voice their complaints. So Bar Councils may be permitted to file complaints.

. In case the complainant wants to withdraw the application he may be permitted to do so. But if the Council feels that it is in public interest it should continue with the proceedings and give its report (This procedure is followed in Canada.)

The rule of law is the foundation of our democratic system which in turn depends upon the Judiciary. Infact the Judiciary is called the watchdog of our Constitution. But slowly the confidence and trust which a common man reposes in Judiciary is dwindling. A national survey held in 2007 by Center for Media Studies in collaboration with Transparency International India showed that as many as three fourths of those interacting with the Judiciary believed that corruption was prevalent in the system. Hardly ten percent thought otherwise.

The courts are the most powerful institutions in our country. The manner of seeking accountability may differ from country to country. But it is one thing to say that method of accountability differs from institution to institution of the country and another thing to say that judiciary is a unique institution and as

such should not be accountable at all. Infact judiciary itself should step forward and offer itself for public scrutiny.

At the same time; under the garb of seeking accountability- independence of the judiciary cannot be trenched upon ruthlessly. Already it is observed that it is very difficult to attract good talent to the judiciary. Those who take up the seats as Judges are already well accomplished and come into Judiciary more by virtue of their uprightness, self-respect and goodwill than any other considerations. A good balance has to be struck between judges self respect and their accountability.

In such a scenario the endeavour made in the form of the Judges Inquiry Bill (inspite of the serious opposition from Judiciary)-may be given its fair chance in resurrecting the diminishing public faith in the Judiciary. The Judges should also take this in the right spirit and not as a setback to their self-respect. They should consider this as a chance given to show that all men are equal in law and that if required Judges are prepared to go through the Agnipariksha only to come out unscathed.

(Author is an Assistant Professor in Pendekanti Law College, Hyderabad)

[1] The cabinet had decided to introduce the Judges Inquiry (Amendment) Bill 2008 in Parliament after withdrawing the Bill of 2006 from the Lok Sabha.

[2] Objects and reasons of the Judges (Inquiry) Bill 2006

[3] Section 2(f) of Judges (Inquiry) Bill 2006

[4] Section 2 (j) of Judges (Inquiry) Bill 2006

[5] Section 3 (2) of the Judges (Inquiry) Bill 2006

[6] 1991 INDLAW SC 711

[7] Journal of Transparency Studies, Centre for Media Studies, Delhi, page 9 (APRIL-MAY 2007)

[8] Journal of Transparency Studies, Centre for Media Studies, Delhi, page 13 (APRIL-MAY 2007)

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