

JUDICIAL ACCOUNTABILITY OR ILLUSION
THE NATIONAL JUDICIAL COUNCIL BILL
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The recent decision of the government to bring a bill to amend the Judges Inquiry Act and provide for the constitution of a National Judicial Council to inquire into complaints against errant judges is being perceived as a long awaited initiative to introduce some accountability for judges of the higher judiciary. But on examining its provisions in the light of past experience we will see that it is designed more to create an illusion of accountability, while in practice it will hardly change the existing status quo.

There has been a growing realization over the past many years that the system of impeachment created by the Constitution for dealing with judicial misbehaviour is impractical and unworkable. This is partly because, to set the process in motion one needs to get an impeachment motion signed by 100 MPs, an impossible task, unless one already has unimpeachable documentary evidence to prove the guilt of the judge. In most cases, that is not possible unless some investigative body investigates the charges and collects evidence. In Justice V. Ramaswami's case, it was possible to do that since the charges pertained to purchases made for the High Court and his official residence and were audited by the accountant General's office, whose audit report contained the evidence necessary to frame charges against Ramaswami. He was then tried by a committee of 3 judges appointed by the Lok Sabha speaker, who found him guilty on many charges of misfeasance. Despite this, he escaped removal because the then ruling party decided to abstain from voting on his impeachment motion.

The problem of judicial accountability has been compounded by the Supreme Court's judgement in the Veeraswami case, in which it declared that no judge of the High Court or the Supreme Court could be subjected to even investigation in any Criminal offence of corruption or otherwise, unless one obtains the prior written consent of the Chief Justice of India. This has resulted in a situation whereby no sitting judge has been subjected to even investigation in the last 15 years since that judgement, despite public knowledge and complaints of widespread corruption in the judiciary. The police does not dare approach the Chief Justice for permission to investigate, unless they already have clinching evidence, which they cannot get unless they investigate. It is a classic catch 22 situation which the judiciary is obviously happy to live with.

Further, the judiciary is even insulated from public criticism by the threat of Contempt of Court, which can be used in a very draconian manner

by the very judges towards whom the criticism is directed, as we saw in the Arundhati Roy case. The sword of Contempt has kept the judiciary away from searching public scrutiny, particularly within the mainstream media. The judiciary is obviously happy to live with this situation as well.

The judiciary is even seeking to effectively remove itself from the purview of the Right to Information Act. The Supreme Court has recommended amending the Act to remove the jurisdiction of the Central Information Commission over it under the Act and further that any information interdicted by the Chief Justice on the ground of independence of the judiciary will not be given. As if mere transparency in the functioning of the judiciary can compromise its independence! Taking a cue from the Supreme Court, most High Courts have not even appointed Public Information Officers under the Act till now and many High Courts have framed rules contrary to the Act. The Delhi High Court rules provide that no administrative information which is not in the public domain will be given. Thus, information about appointment of class 3 and 4 employees by the High Court without any public advertisement is being denied citing this illegal rule.

To cap it all, the Supreme Court has by an amazingly creative interpretation of the Constitution taken over the power of appointing judges in its own hands. The words “appointed by the government in consultation with the Chief Justice” in the Constitution were interpreted as “appointed by the government on the advice of the Chief Justice”!

Thus, the judiciary has effectively become a law unto itself, unaccountable to any one by declaring itself as *sui generis*. And while its accountability was being whittled away, its powers were increasing as it moved in to occupy space vacated by a weak and corrupt executive.

It is in this background that one needs to analyse the proposed Judicial Council bill. It seeks to amend the Judges Inquiry Act to provide for a complaint procedure for an inquiry against erring judges. At present, this inquiry can only be made on an impeachment motion signed by 100 MPs. Though that is an improvement, it is the composition of the Council and its lack of investigative powers that renders the bill a non starter. The Council to examine complaints will consist of 5 senior judges of the Supreme Court in complaints against Supreme Court Judges and 3 senior judges of the Supreme Court with 2 Chief Justices of High Courts in complaints against High Court judges. Firstly, sitting judges who are already overburdened with judicial work will not be able to devote adequate time to this job. Secondly, and more importantly, sitting judges would find it difficult and embarrassing to hold their brother judges (sometimes their seniors), with whom they share

the bench every day, guilty of misdemeanors. Not impossible, but unlikely. For any unbiased and realistic enquiry against judges, one needs a full time body, independent of the government as well as of the judiciary, with an investigative machinery under its control, through which it can get complaints investigated. A view has been propogated by the judiciary that the judiciary cannot be made accountable to any outside body, but only to itself. Anything else they say will compromise the independence of the judiciary. That is why they adopted an “in house proceEDURE” in 1997 to inquire into complaints against judges. This also envisaged a committee of judges to inquire into complaints. But there have hardly been any inquiries during the last 9 years, though there have been many reports and complaints of judicial misbehaviour. This self accountability is akin to a judge sitting to decide his own cause, something which has been declared by the courts to be violative of the principles of Natural justice. Independence of the judiciary means independence from the Executive and the Legislature, but not independence from accountability. It is a fundamental principle that every institution must be accountable to an authority which is independent of that institution. Yet somehow, the judiciary has propogated a view that the judiciary can only be accountable to itself.

For all the above reasons, the proposed Judicial Council will not usher in any real judicial accountability, though for some time, till its import is properly understood, it may create an illusion of that. That in fact appears to be its main purpose, judging by the statements of the Ministers and judges, who say that this bill will go a long way to restore public confidence in the judiciary. It might end up essentially as a confidence trick.