

**ASCI – CMS Meet
on
Judicial Accountability and Reforms,
June 20, 2007
Hyderabad**

A Report

The Administrative Staff College of India, Hyderabad (ASCI) joined the Centre for Media Studies, Delhi (CMS), which is one of the key constituents of the Campaign for Judicial Accountability and Reforms (CJAR), in organising a one – day seminar on the topic in Hyderabad on 20th June 2007. Participants from various towns of Andhra Pradesh such as Kurnool, Warangal, Kakinada, and Hyderabad / Secunderabad attended the meet, which was organised following the decision at the First Peoples Convention on Judicial Reforms (Delhi, March 9 – 10, 2007) to organise meetings on the topic in several parts of the country in order to build up the Campaign on a nation – wide basis.

Welcoming the participants, **Dr Bhaskar Rao**, Chairman, Centre for Media Studies pointed out that the meet was an initiative taken in the public interest without any corporate sponsor. The discussion – “whither the judicial system” should not be restricted to Delhi, and the issue of the access of the poor to justice is very important. **Dr S K Rao**, Director, ASCI, said that much good could be done by the judiciary – but there was much which needed to be done to reform it now. Citizens need to put pressure on the judiciary to make it function well.

Noted Human Rights activist and senior lawyer **Mr K G Kannabiran** pointed out that just like other constitutional institutions, the judiciary too was in a crisis today. The problem was more acute in the higher courts. The British court system, which we have inherited was “neutral and impartial” only when imperial interests were not involved. The concept of independence of the judiciary has become a fetish. Politicians usually care for public opinion while making appointments to the executive, but the courts have formulated a “principle” appropriating the power of appointment of judges to the judiciary itself – and they do not have to fear public opinion. The method of appointing judges, with the secrecy involved, leads to corruption. Legal ‘merit’ today lies in the ability to manipulate – judgments and decisions. There is no way to remove such judges. Impeachment is impossible – and offences supposed to have been committed by Justice Ramaswamy pale in front of those we hear of from other judges these days. Corruption in the Supreme Court hits senior advocates.

Speaking on the laws enacted by successive governments, he pointed out that many were against the basic human rights of personal liberty and freedom of association. Governments never tried to solve political problems politically, treating them instead as “law and order” problems. From the issue of Jammu and Kashmir to the demands of the Gujjars, many issues raised by the people have been so dealt with. Today, land is being acquired across the country for “public purposes” by the governments, and then sold at high prices to wealthy corporates! Directive principles of the constitution are being totally ignored. If redress is not available from the proper channels, private justice would be resorted to. Gujarat riots witnessed the total suspension of rule of law. When Sikhs were

massacred – no one got justice. Problems such as reservation can only be solved by consensus, not confrontation.

Public Interest Lawyer **Mr Prashant Bhushan** said that the campaign was a very important one. The vast majority of people in our country cannot even access the judicial system.

A system which could function which could function without lawyers could be relevant for the vast majority of cases. *Gram Nyayalayas* could be a step in the right direction for small cases. Any procedure consistent with the principles of natural justice is enough, without being bound by other procedures. Common sense and a sense of justice are the essential pre – requisites for a judge, and a basic training of one year is enough. The system needs to reinvent itself as an informal one.

The second major problem faced by people is delays – very few people have use for judgments in the end. More than 75% of cases take more than 15 years after which the decision is meaningless. If a system is informal, it will be faster and more meaningful. The system of appointments for the higher judiciary is a big problem. Nominations are totally ad – hoc, merits and demerits of prospective candidates are not made known, even a list of prospective candidates is not drawn up! There is no transparency, many with dubious background are appointed.

Higher courts these days are routinely handing out anti – people judgments – for example decreeing the demolition of slums housing tens of thousands of people in Delhi and Mumbai, ordering hawkers off markets and rickshaws off the roads. Whatever an elected government is unable to do because of its democratic accountability, is being wantonly done by the judiciary. Another major problem is the total unaccountability of the judiciary. There is no disciplinary power except impeachment, which is impossible to carry out. The power of “contempt” is so draconian that even the press is unwilling to report on misdoings of the judiciary.

These problems would require a whole range of solutions – a National Judicial Commission, informal courts, appointment of more judges, and changes in the system of appointments, especially to the higher judiciary, etc. Those in power would not like to implement these solutions and they are happy with a non-working judiciary. It is the common people who are adversely affected. That is why this movement is necessary – only public pressure will produce results.

The Chief Guest, former governor of Himachal Pradesh and Karnataka, **Dr V S Ramadevi** recalled her time in the Law Commission with Justice Desai as its Chairman. However, the reports of the 1986 Law Commission are still gathering dust! She pointed out the need for quick relief.

Dr Ramadevi then inaugurated the **website** of the CJAR, and the various features of this site were explained on behalf of the team which had worked to establish it. All participants were exhorted to contribute regularly to the website and use it as a tool to further the campaign for judicial accountability and reforms.

Prof Madabhushi Sridhar said that the demand of judiciary to be exempted from the purview of the Right to Information (RTI) Act was unacceptable. The lower judiciary was in fact more accountable and less independent, he felt. As regards the higher judiciary,

the permission of the Chief Justice was required even to register a First Information Report (FIR) against a judge, let alone prosecuting or punishing him. He recounted how a newspaper was prosecuted merely for reporting that a complaint against a judge had been filed in Hyderabad.

Majority of people are denied justice today. Elitist attitude, ego, unaccountability and hunger for power are only some of the evils plaguing a large section of the higher judiciary. Even the Judges Inquiry Bill has a terrible provision for sending complainants to jail if they are unable to prove their case – then how can people be expected to complain against sitting judges? We should stand up against the bad attitudes and question what is happening. He urged all to fight for accountability and real independence of the courts.

During the post – lunch session, many participants, both advocates and peoples' activists, made presentations and interventions. About twenty interventions were made, some of these, for example those by **A V Gurunadh**, and **D Subba Rao**, were in Telugu. RTI activist **Mr Venkateswara Rao** said that last 60 years have seen a tragic decline in the delivery of justice. The judicial system always now acts as an instrument of the rich and powerful, snatching away land and water of the poor. The media should be allowed to criticise without fear of contempt and recruitment of class III and IV personnel should be transparent.

Dr Venkatesh Sundaram of the Lok Raj Sangathan pointed out in his presentation that the concept of rights itself has undergone change over the centuries. English kings used the concept of “divine right of kings” to rule over their subjects, while a modern definition of rights of individuals and collectives and their harmonisation is the need of the times. The laws and system of governance which the colonialists put in place were meant primarily to safeguard the colonial system of exploitation and plunder. Maintenance of “public order” by the judiciary meant maintenance of orderly conditions for exploitation of people and resources.

Every sector of the economy today – from agriculture to retail – is seen as source of profit by big corporations Indian and foreign. More and more sectors are being opened up to foreign capital. The judiciary is aiding and facilitating this increased loot and plunder of the country, its toilers and tillers, tribals and indigenous peoples. “Judicial activism” is a thoroughly anti-people, arbitrary, unjust tool, by which the ruling class and its political parties are able to carry out attacks on the toiling people without revealing their hand. All over the country, in various struggles, people are fighting to extract sovereignty and take it into our own hands. In a modern state, all arms of the state must be under the control and supervision of the people. This means that the judiciary too must be electable and subject to recall by the people. The struggle we are waging to renew the judiciary and bring it under the control and supervision of the people is an important part of the overall struggle for empowerment. It is only appropriate that on the one hundred and fiftieth anniversary of the formal divestment of our sovereignty by the British crown, that we rededicate ourselves to the task of vesting it with the people.

Ms Swati of the CGG said that “common sense” was uncommon, especially among the judiciary. She questioned the need to give absolute power to judges, and said that there was a need for a code of ethics for the Bench. **S M S Abdul Siddiqui**, Member, District Legal Services, Warrangal, pointed out that the whole of the society, not just judiciary, was in rot. There was a long struggle to free our land – now we need to free it again.

Police today is foisting false cases and turning innocents into criminals and breaking up families. Legal services unfortunately remain limited. A joint struggle to change the situation was needed the most. Advocate **Nagendra Babu** said that structures had failed to function as designed. While the legislature and bureaucracy were somewhat accountable, the judiciary, especially the higher courts, were least accountable. If higher courts function properly, lower courts can be set right within a month. A P for example has just 750 judges – leading to delays and miscarriage of justice both in civil as well as in criminal cases. **Dr Bhaskar Rao** made a brief presentation of a study on judicial corruption. The Meet ended by adopting a charter listing various concrete demands to reform the judiciary, making it more accessible and accountable.

Prepared by Dr. Venkatesh Sundaram, Lok Raj Sanghathan