

REPORT ON THE SEMINAR ON JUDICIAL ACCOUNTABILITY

13TH OCTOBER 2007

Indian Society for International Law, Bhagwan Das Road, New Delhi

Chairperson

Mr. Shanti Bhushan.

Main speakers:

Mr. V.P.Singh, Former Prime Minister,
Justice J. S. Verma, Former Chief Justice of India,
Mr. Arun Shourie, Former Cabinet Minister and Former Editor of Indian Express
Mr. A.B. Bardhan, General Secretary of CPI
Mr. Ram Jethmalani, Former Law Minister
Mr. Sharad Yadav, President Janta Dal (U)
Mr. Sitaram Yechuri, Member Polit Bureau, CPI (M)
Mr. P.C. Alexander, Member Rajya Sabha and Former Governor of Maharashtra
Mr. Dinesh Trivedi, Leader Trinamool Congress, Rajya Sabha
Mr. Vinod Mehta, Editor Outlook
Ms. Arundhati Roy, Writer and Social Activist
Mr. Kamal Mitra Chenoy, Member Central Committee, CPI

Introduction

Mr. Prashant Bhushan made the opening remarks to the convention pointing out the immense power the Judiciary enjoys today and its concomitant lack of accountability to the People.

He referred to the scope of judicial power and the fact that the courts today pass orders on a wide array of matters, including whether rivers should be interlinked, the kind of fuel to be used in vehicles, whether jhuggis and hawkers should be removed from Delhi or whether rickshaw pullers should be allowed to plough on the streets of Delhi etc. Today the judiciary can perhaps be called the most powerful institution of the State, and yet if one were to look at its accountability to the people, one would find that whatever little level of accountability the judiciary once had has now shrunk to nothing due to various reasons and developments that have taken place over the years.

To begin with, he pointed out that the Constitution makers, in order to keep the judiciary independent of the Executive and the Legislature, had prescribed a very stringent procedure in the Constitution for taking action against judges and removing them through the impeachment procedure. He referred to the Justice Ramaswami case where an impeachment motion was actually signed by more than 100 MPs, and was consequently admitted by the Speaker, Lok Sabha. Thereafter an inquiry committee of 3 judges was appointed who held a trial of the judge and infact even found him guilty. The entire process however ended in a failure, as he was not removed. Mr. Bhushan also referred subsequent attempts to impeach other judges, which failed. He pointed out that for a motion of impeachment to be successful it is imperative that one has unimpeachable documentary evidence of very serious misconduct against the judge, and secondly that the charges against the judge are publicized to the point that it assumes the form of a public scandal.

In most cases, however, it is very difficult to find documentary evidence of misconduct against a judge as a result of which one cannot even prepare an impeachment motion and even when one does on the basis of some strong documentary evidence, it is next to impossible to get the motion signed by a hundred MPs of the Lok Sabha or fifty MPs of the Rajya Sabha because the charges are not publicized because of the fear of contempt in the media. Furthermore he went on to state that the two major constraints suffered by the media, while reporting corruption in the judiciary, were firstly the fear of contempt and secondly because often, due to the nature of the media, it is amenable to being 'managed' and as was evident in some cases in which some sections of the media had prepared the entire charge sheet against the judge and had also prepared pages of their newspaper in which all of it was to be published but was not published because the newspaper was thereafter 'managed'.

The second level of the problem was further compounded by the judgement, which came in Veeraswamy's case in 1991, which said that an FIR cannot be registered for a criminal investigation against a judge without the prior written permission of the Chief Justice of India which, it has been found in every such case, is not forthcoming.

The third level of the problem of judicial accountability is this fear of contempt. The Contempt of Courts Act makes it contempt to scandalize the court or lower the authority of the court. This jurisdiction has unfortunately been used in a manner such that any exposure of misconduct or any exposure of dishonesty in any section of the judiciary is considered to be ex-facie contempt.

Earlier, the judiciary had taken the view that truth was not a defence to "lowering the authority of the court". After a long struggle, however, Parliament amended the Contempt of Courts Act to provide that truth shall be a defence however the words used are that 'truth may be used to as a defence provided it is in good faith and bonafide'. However the problem with this is that very often the same judge against whom the allegation is made issues the notice for contempt and hence he has to decide whether the allegations made against him are bonafide and in good faith or not and then decide whether he should allow the defence of truth to be taken or not. Taking view of the Mid-Day case, where the court considered the allegations made against the former Chief Justice by a daily newspaper based on documentary evidence obtained from government websites itself, said that they would not go into the truth or otherwise because by making such allegations the entire judiciary had been scandalized. Furthermore the Court came to the conclusion that by imputing motives against the former Chief Justice, the "contemnors" had also imputed motives against his brother judges even though the Mid-Day reports did not mention anything about the other judges and therefore, held them guilty of contempt and sentenced them to prison for four months.

The fourth level of the problem has been created by the judiciary's response to the Right to Information (RTI) Act. The RTI Act is meant to apply to all public authorities, including the Judiciary and is in fact expressly stated to be so however despite this, some High Courts have not even framed rules or appointed Public Information Officers (PIO) under the RTI Act. Punjab and Haryana High Court is yet to appoint PIOs, two years after the RTI Act came into force. Other High Courts have framed rules, which are completely contrary to the Act. Delhi High Court rules say no information on administrative or financial matters shall be given. The RTI Act does not exempt information on administrative or financial matters but the Delhi High Court has framed rules to that effect. They are emboldened by the fact that if one were to challenge the rules one has to approach the Court itself and hence no other authority would have been able to frame such rules, which are in the teeth of the Act. The Judiciary is also

seeking to protect itself from disclosure of information. For instance, some judges told us that Chief Justices routinely appoint class IV employees without following any procedures, in complete violation of article 14. When the Delhi HC was asked under the RTI Act to give a list of Class IV employees appointed in the last ten years and the procedure followed for their appointment. The Delhi HC replied that this information would not be disclosed.

The Executive today has a vested interest in not having a functional judiciary, because they feel if the judiciary is functional and honest it would hold them to account for their misdeeds. The Judiciary has developed a vested interest due to the failed judicial system as a result, this business of arbitration. Most retired judges with very few honorable exceptions, which has become an enormously expensive process, which cannot be resorted to by a common person. These retired judges charge Rs. 50,000- 1 lakh as arbitration fees.

He concluded by adding that this seminar can serve the purpose of the process of building a common consensus on at least two issues:

The need to further amend the Contempt of Courts Act and delete the part of 'scandalizing the court' and 'lowering the authority of the court' from the definition of criminal contempt. And secondly,

To have an independent Constitutional Body called the National Judicial Commission. The contours of that body, the exact composition of that body can be discussed.

Panel discussion

*Shri Shanti Bhushan
(Former Law Minister of India)*

Mr Shanti Bhushan addressed the panel discussion by stating that the subject being discussed in the form of judicial accountability is the basis on which the future of democracy rests. Unless a totally efficient and totally honest judiciary in this country is created, which is devoted to the cause of the people, democracy will not be able to survive the way we want it to survive. He further brought attention to the deplorable state of affairs in the judiciary by quoting that a former chief Justice of India a few years ago had said that 20 percent of the higher judiciary is corrupt which is a matter of total disbelief, but also that some people feel it was a gross understatement to put that level at 20%.

*Shri V P Singh
(Former Prime Minister of India)*

Shri V P Singh began with endorsing the idea of the formation of a National Judicial Commission. Regarding the appointment and selection procedure, he suggested that this very committee could be involved. He further talked about the provision in the Constitution that there shall be All India Judicial Services. Stressing that there is already an existing provision and all these appointments till now are being made under an ad hoc provision. He pointed out that when there is a specific provision, its time we picked it up from the Constitution, as it is in no party's manifesto, it's a proposal coming out of the constitution itself. He added, if we have it under the auspices of this Judicial Commission, we can sensitize both. He concluded by strongly supporting the Right to Information as a right we must protect and one which empowers people.

Justice J S Verma
(Former Chief Justice of India)

Justice Verma began by pointing out that now the rule of law is the bedrock of democracy and the judiciary has been entrusted with this pious duty or obligation of ensuring proper implementation of rule of law then naturally the significance of our responsibility need hardly be emphasized. He continued further that unless we have the moral authority, merely legal sanction or legal authority is not going to help. He further suggested that to make a new law to ensure an effective mechanism to enforce judicial accountability at the highest level also but it must be ensured that judicial accountability as a facet of the independence of judiciary and therefore, it should be consistent with the concept of independence of judiciary and it must ensure the protection of the honest and correct kind of judges. Whatever mechanism is chosen, it must be ensured that it is not simply a way to hound the judges but also to protect the honest and good judges. Justice Verma questioned, if the Supreme Court makes a direction asking all election candidates to declare their assets and very rightly, then why should not the judges do it? Why should records related to the appointment of judges not be disclosed after the appointment has been made?

Once there is transparency/openness that itself will enable public scrutiny. The fact that there is public scrutiny will act as an internal check and a check against arbitrariness. This is the kind of system, which our Constitutional philosophy has. After all transparency is the reason for the Right to Information Act.

On the composition of the National Judicial Commission he suggested that both the Judiciary and the Executive should be a part of it but he argued that we have seen both instances of Executive primacy and Judiciary's primacy. He suggested if there be someone who belongs to neither, should be appointed to chair the independent body.

He concluded that the way he has understood the contempt power, even before the amendment was made is - if a person is speaking the truth, our Constitutional philosophy does not punish speaking the truth. He continued by quoting the words *satyameva jayate* written everywhere but if *satya* is the biggest tragedy then what is one talking about- and we are the biggest hypocrites. Now we have it as an express provision by amendment. If we judges do not rise to the occasion and do the needful then the erosion of independence of judiciary by outside interference is bound to come for reasons for which we would be responsible

Shri Arun Shourie
(Former Cabinet Minister and Former Editor of Indian Express)

He began by pointing out that to learn that the judiciary has framed formal rules to block disclosure of information is just a step in the direction of destroying public confidence. Also that the in-house mechanism does not work and more so if the public comes to believe that the judiciary is acting as a brotherhood then the confidence of the public in that mechanism is going to be absent. Therefore affirmed that the Independent Judicial Commission is very timely and necessary. He brought a very important point into notice that this Independent Judicial Mechanism must have an investigated mechanism of its own. Some rules should also be framed in which the triggering of the inquiry is automatic and it must be the counterpart of day-to-day hearing in this case if I'm charged with something then it is my responsibility as a sitting judge to furnish all evidence without any delay to the investigating agency. He strongly supported that this must be followed by the harshest possible punishment. Also if any frivolous allegations are made against anybody then you can compound the penalty to any extent. This will be in the interest of the honest judge and in the interest

of the institution because any suspicion left hanging in the air is more corrosive than any fact, which will be established by subsequent inquiry. He concluded by subscribing to both the proposals with regard to the mechanisms as well as with regard to changes in the Contempt of Court Act and also suggesting that reformation is in the hands of those who are the beneficiaries of the present system- the judiciary, the press or the legislatures, therefore, only recourse is great public pressure for any changes we wish to make.

Shri Ram Jethmalani
(Former Law Minister of India)

Mr Jethmalani began by saying that it is one of his personal regrets that we don't have a strong government. In his opinion the quality of judges appointed earlier was much better than the quality of judges appointed after these collegiums. Our founding fathers and the Constitution makers never thought that Judiciary would reach to this point. He said that 20% of the superior judiciary is corrupt, what is worse he further emphasized is that there must be something wrong with the remaining 80% who saw to it that the 20% corrupt people have ascended the bench. He continued by a dictum that ultimately it is the character of men who work a particular system that makes a system either a success or a failure. That there is a systemic failure is itself a myth. It is an escape route for people, who are incompetent, corrupt and who have no intention of either removing their incompetence or getting rid of the corrupt elements in their own thought processes. Some incompetent judges will be there, one can't expect all judges to be competent, but a corrupt judge is a disaster! He continued by questioning if judges were actually a brotherhood, and came to a conclusion that they are in fact a corrupt trade union. He followed his line of argument by questioning that when there is a judge who has been charge sheeted why is it that, that judge's case is not being heard in the last ten years. Why are the judges silent about a case where a judge is the accused person? Such criminal cases are pending for the last couple of years. Why doesn't the case restart? He wittingly added that such a judgment would create a nice precedent if a judge of the High Court is found guilty and sentenced and he must be sentenced to twice the punishment, which you would give to a normal citizen.

The condition today of the judiciary is a conspiracy between a corrupt government and a corrupt minister wanting corrupt judges of his choice, and prayed that such a conspiracy must end. He suggested that such a conspiracy must be terminated by popular opinion. He concluded by adding that only those people can stand against such corrupt judges and the government who are ultimately willing to sacrifice everything to meet this end, the people of this country and the members of the bar must spot these people. Nothing is worth living for unless it is worth dieing for- that's the principle of life.

Shri A B Bardhan
(General Secretary of CPI)

Since we are here discussing the judiciary, who are nowadays coming out with all sorts of judgments, I want to draw your attention to two or three issues. First of all the whole idea of judicial activism also should have been dealt with here. You have started by correctly saying that the Executive, the Legislature, and the Judiciary are the three pillars of our Constitution. Our entire democratic polity stands on these three pillars but there is a very serious attempt now being made in the name of judicial activism for the judiciary to trespass into fields that are reserved for the legislature and the executive. They maybe failing in their duties, they are, we are critical of them as much as anybody else but then the question arises – is the judiciary not failing in its duties?

Thousands of cases are piling up. Judgments are delivered on very serious matters after 10 years, 14 years etc. When the matter is no longer there you dig them up and deliver judgments including death sentences, life sentences. I think the judiciary should first of all should mind its business, before it tries to trespass in to the field of the executive and the legislature.

Shri Shanti Bhushan
(Former Law Minister of India)

I agree that judges, normally, the majority who come from upper caste are sub-consciously biased in favour of upper caste, and therefore there is need for securing representation of all sections of society even in the judiciary, including at the highest level. But if you carefully consider the composition of the National Judicial Commission, which has been suggested; two members are required to be nominated, one by the Union cabinet and one by the leader of Opposition in the Loksabha in consultation with the other opposition groups in the two houses. I'm sure as the recent Constitutional Amendments have shown all political parties are interested in the caste, namely OBC, SC and therefore I expect that when the Union Cabinet appoints its nominee on the National Judicial Commission they would see to it that an eminent member of a particular backward caste will be nominated by them. Similarly, the leader of the Opposition will also see to it that an eminent member either of the SC or OBC is to be nominated. Once two members belonging to these castes are in the National Judicial Commission, out of five, I think they would be able to see that no injustice will be done to those caste groups also.

Sitaram Yechury
(Member Polit Bureau, CPI(M))

I'm here on behalf of the Communist Party of India – Marxist to extend our support to the issue of judicial accountability and reforms and the National Judicial Commission. That no system can work unless you have character is a fact! But the point is that in the name of strength of character to deny the evolution of a new system, which can be effective that I think is actually subscribing to the status quo and allowing it to continue.

The beginning of our preamble, where we say, "We the people of India" give to ourselves this Constitution, I think, defines in itself the centrality of people's will in our Constitutional framework - this centrality of the people's will cannot in my opinion be encroached upon by any organ. According to this framework the judiciary has the right of judicial review not judicial activism. Through judicial activism the judiciary is encroaching upon the centrality of people's will, which is our Constitutional framework.

Therefore it is a much larger issue that encroaching upon the territory of a Legislature or the Executive but by doing so, the Supreme Court is doing all kinds of things from calibrating the heights of speed breakers, I was recently in Kolkata, where the High Court ordered the shifting of a bus stop from the Victoria Memorial, which is where they all come in the name of environment etc; the concerns maybe correct but in whose domain are these? Where the Executive has to take a decision the judiciary's encroachment in the name of judicial activism is there for all of us to see.

If the Executive is not efficient and is ceding space, I think the judiciary's responsibility is to throw it back on the lap of the Executive saying it is your job, you decide and not encroach on that saying that since you're not doing it - let me do it for you. Judicial activism actually negates the Legislators supervision of the Executive and thereby it

negates, ultimately, the supremacy of the will of the people. It is the legislature that embodies the will of the people and if that will of the people cannot be exercised in the supervision of the Executive misrule or misconduct then the will of the people is being sacrificed because those decisions have moved out of the Executive's domain into the Judiciary.

The system being proposed through the National Judicial Commission includes representatives from the executive, from the legislature from the judiciary and also from the bar. Let this Commission be formed - it is the way forward. Therefore, there is an urgent need to correct the imbalances that have arisen. We have reached a stage where the process of maturity of Indian democracy has to be taken forward. Many people bemoan coalition governments are regressive to democracy; I say no coalition governments is actually maturation of our democracy because our social plurality cannot be contained in a political monolithic order.

P C Alexander
(Member Rajya Sabha & Former Governor Maharashtra)

On the subject of a National Judicial Commission and its relevance to accountability, which is the theme of this conference. I have considered this meeting as very timely as you are aware the 2006 Bill - Judges Enquiry Bill as it is called has been before the Parliament for nearly two years now and it has been referred to a Standing Committee and the report of the Standing Committee has been sent back to the Parliament. This is the time when public opinion should be expressed on the idea of the Judges Enquiry Bill 2006 and particularly on the idea of a Judicial Commission at the national level, which according to many of us is absolutely necessary to make the concept of judicial accountability meaningful. The five provisions in the Constitution have made independence of the judiciary very much in favour of the occupants of these positions of even judges in our country. Nobody will object to the idea of recognizing the independence of judiciary because its an article of faith as far as democracy is concerned so independence of the judiciary is accepted but our contention is that independence of the judiciary is not incompatible with accountability the two need not be contradicting each other and that judges will retain their independence and in fact their independence will gain greater respect and acceptability in a democracy if they are also made accountable- accountable to the people of this country; not accountable to the legislature per say or to the law minister or to the Prime Minister. In all cases in a system of democracy that is followed in our country in all cases, accountability is ultimately to the people.

The proposal we are considering today is that there is no way of ensuring accountability of the judiciary unless there is a comprehensive legislation creating a body, which is empowered not only to correct the errors committed by them or to award minor measures or recommend major punishment or removal but also to select and appoint judges. The power to recommend transfer of judges from one place to the other then the power of maintaining enforcing discipline will follow and they can provide such punishments themselves or recommend the awarding of punishments through the President and finally they can recommend impeachment. This is the need and importance of a National Judicial Commission.

Shri Shanti Bhushan
(Former Law Minister of India)

The question whether apart from impeachment the judges were subject to other punishments was squarely answered by the Constitutional bench in the Justice

Veeraswamy case. An argument was raised on behalf of Chief Justice Veeraswamy before the Supreme Court that even an Indian Penal Code when it provided for a public servant being punished for accepting legal gratification was not applicable to the judges and the judges could not be prosecuted under the law. Thankfully the Constitutional bench turned down this argument and squarely held that not even a judge of the Supreme Court was an exception from the law contained in the Indian Penal Code regarding corruption and that they were liable to being prosecuted for corruption and sent to jail but what they did in that judgement was that it is very necessary to maintain the independence of the judiciary that we should provide in this judgement that not even an FIR can be registered against a judge for any offence even corruption and only the Chief Justice can permit the registration of FIR. Judicial Commission could have two separate wings; each consisting of five persons; each being constituted in the same manner but one wing of five persons will deal only with appointments and the other wing again consisting of five other members; both wings have security of tenure; dealing with any complaints against these members; and the National Judicial Commission should have an independent investigating machinery not depending on the CBI or any other police wing but their own wing of investigators directly under them only so that they could get the matters investigated and the evidence collected against those persons.

Dinesh Trivedi
(Leader Trinamool Congress, Rajya Sabha)

I have come primarily to express solidarity with the cause. I came here to be enlightened and to learn and I have learnt a lot but at the same time I have not learnt anything new! I was a little concerned that whatever I may say will be in contempt of either Court or the Parliament. But I have a great defence now in me, even anybody hauls me up for contempt, I'll say you go and catch Mr. Ram Jethmalani and then come to me. After listening to him this morning, I am not worried at all.

My suggestion is that we have system that records the arguments being presented in court, verbatim, like we have in Parliament. Perhaps, in this day and age all the proceedings can be video recorded. We must have total transparency – today we have parliamentary proceedings being telecast live, the scenes are very ugly but the fact is its being shown. I once again express my solidarity and support for the cause.

Shri Shanti Bhushan
(Former Law Minister of India)

I'm glad you mentioned that after listening to Mr. Ram Jethmalani you feel secure that no proceedings for contempt can be lodged against you because you have a ready defence. In fact the only reason why people are afraid of contempt even when they speak the truth is because of the fear of imprisonment, which the judges have terrified them with. They have to lose that fear and they are losing that fear and by the end of the seminar they would have lost that fear as you have.

Gandhiji has said there are two kinds of laws. Some laws are just and some laws are unjust. You have a duty to obey the just laws but you also have a right to disobey the unjust laws. And I would say, we the people and also the media must remember this.

Kamal Mitra Chenoy
(Professor JNU, Member Polit Bureau, CPI)

I speak here as a student of political science, particularly of the Constitution and of

Human Rights.

In India, increasingly the Supreme Court has allocated to itself powers not only powers of appointing people in a charmed circle, promoting nepotism. In fact the selection of University judges is more rigorous than the selection of judges. Their publications are examined, their previous work is examined they face a rigorous interview, sometimes with 100 competing candidates and that's how they are selected but the judiciary has become a truly charmed circle. And partly for this one must blame the fourth estate. The romantic way in, which Public Interest Litigation was reported and not followed up; so if there was a hearing on Narmada or the Indira Sarovar Project but bad follow up or no follow up, that did not get press publicity. On the other hand since the judges were getting more and more powerful they began exercising their right of contempt to everyone. Some problem in a State, summon the Chief Secretary, law and order problem, summon the DGP and anything. You could be a writer and because what you said irked their majesty, their Lordship the judge- you were sentenced to contempt.

Now in a country where the truth cannot be said about, say a Chief Justice who has made profits from a judgement on sealing and if this is contempt for which one may go to prison then its very much like the freedom struggle. People went to prison during the freedom struggle because they felt they had a duty to speak. I think we have a duty to speak. Judicial Accountability will not come only because of a good law but because there are people who are willing to fight for and stand up for that good law even after it is enacted. And that will always mean that since the Judiciary inherently is a conservative force that there will be a clash within the judiciary. I'm not a lawyer and so I will not professionally tangle with the judiciary but I certainly feel it my right and my duty as a citizen and as a social scientist to speak the truth as I see it – that is what I was trained for. And any judiciary, which tries to stop that is trying to deprive me of the freedom, people like Gandhiji, Nehru and Ambedkar and other fought for and got. I don't see how they have this right; but an entire mystique has been built around the judiciary, that no other institutions function only the judiciary function but how often have the news papers reported how many lakhs of cases are pending in the Supreme Court, High Courts or the Sessions Courts?

The people who people the Supreme Court and the High Court are themselves not above court. I think the Commission on Judicial Accountability is a pressing need because not only do we not have a judiciary that is accountable but also because we have a judiciary that is partially accountable to vested interests. So the letter and spirit of the Constitution is being subverted by this kind of judiciary.

There was a detailed press conference on Justice Sabharwal I know one reporter of a leading national daily who filed a report. The editor who is generally progressive refused to publish that report scared of contempt. We have to do something about this. We have to get some spine into the fourth estate. They can do their other rackets, making TRPS and all that in what they do but what happens to reporting what senior judicial persons, senior lawyers, retired judges, when they are pointing out a crime and a very serious crime that too by a Chief Justice? Without any report being published on Justice Sabharwal, he is given an Op-Ed page to reply. Why? So I really think this is a question critical and crucial to democracy.

Arundhati Roy
(Writer, Activist)

We have been discussing this morning about truth as a defence and now even the law allows for it but in the Mid-Day judgement they have become even more ludicrous. There is a philosophical question here, which is truth? It's not limited to legal

documents that prove that somebody has taken money or somebody has molested a woman. These are not the only truth. And really we are talking about an Institution that has become in many ways a corporate tool and so that too is a truth. Ideology is also something that we should be allowed to discuss and to me almost as dangerous as the fact that you have corrupt judges making decisions in favour of major Corporations or major Financial Institutions for a bribe, almost as dangerous is the fact that they could be making it for ideological reasons. Of course there is nothing one can do about that by legislation but certainly we should be allowed to discuss it, like we can discuss all other kinds of politics out in the open.

There is plenty of historical documentation on what the judges have been up to. If you look at some of the judgments, its not just corruption as I said the lack of logic, intellect, the lack of inability to communicate what you are thinking - sometimes I feel like doing a talk called 'why shouldn't I have contempt for court?' because we expect higher standards. I don't think literature has suffered from criticism, I don't think criticizing a writer or a filmmaker or an artist is an insult to literature. It helps! Similarly, I think we should be allowed to say what we feel about this Institution and the people who run it. If I were asked, what would be the one thing that ought to change, I would say that this is the most powerful institution in this country and it has to be accountable to us.

Anupam Gupta
(Senior Advocate, High Court at Chandigarh)

I have flirted with contempt all my professional life, ever since I joined the bar in 1980. It's only very recently that I actually came face to face with it. The chilling effect of contempt is worse than the law or the jurisprudence of it. There is nothing in contempt but this fear of contempt and I would join you Arundhatiji whenever you decide to put aloft on a banner, in whatever way you wish to speak or write about it – why should I not have contempt for the court? For all that it requires is abandoning fear, a quality or a characteristic or an imperative, a moral imperative, which the Mahatma treated as an article of faith throughout his life and for which he laid down his life. I completely agree with my distinguished elder Shri Shanti Bhushanji that all that it requires to face up to contempt is to treat it with contempt.

Once this attitude is adopted and we renounce that fear nothing remains of contempt. I believe Shanti Bhushanji and Prashant and the other valiant souls who joined hands with them gave a brilliant demonstration of the renunciation of fear in the Mid-Day case; just as Arundhatiji gave it in her case a couple of years ago. Renounce that fear; nothing remains of the law of the sledgehammer of contempt.

Vinod Mehta
(Editor Outlook)

I've come here to express my solidarity with the seminar. We all in the media were very outraged when four journalists from Mid-Day were sentenced to four months imprisonment. That itself provoked a whole campaign and several sections of society got involved with that Campaign. The whole question of contempt and scandalizing the court has not become an issue at the top of the public mind and I think this debate should not stop at the fate of the four journalists. I think the judiciary itself is quite embarrassed by what they have done and they would like to defuse that particular problem in the hope that the larger problem of contempt of court that we are also fighting is ignored and brushed away.

As for this other issue about 'who will judge the judges' and the constitution of the

National Judicial Commission, everyone is on your side. How do we take this debate forward, who do we get involved? I was just thinking that once you involve politicians in this, I think, it's a double-edged sword. When you pit politicians against the judiciary, public opinion will always back the judiciary against the politician. The issue of accountability is lost and a private fight ensues between the judiciary and the politicians. I suggest we involve civil society more actively and keep the role of politicians minimal.

Sum up

Since the morning we have heard an enunciation of positions on the issues surrounding us on this generic issue of judicial accountability by particularly powerful political leaders of the country also several eminent leaders of the bar, a former Chief Justice of this country who was also frank and forthright. There has been an almost unanimous consensus without exception on several key related issues of judicial accountability. First of course, there is a crying need for an institution, which can exercise disciplinary powers over judges not merely on just corruption but on every kind of misconduct. Whether its misconduct by way of exercising jurisdiction, which they do not possess in a totally arrogant manner in a totally illegal manner, or whether it is acts of other kinds of administrative or judicial misconduct. Across the board we saw complete unanimity about the composition of that Committee. There wasn't that much discussion about the exact composition of that Committee. The formulation, which has been suggested in the background paper generally found acceptable by most people however, that's a matter of detail, which can be discussed and fine-tuned in terms of what should be the exact composition of the Committee.

Another issue on which, we had near unanimity is the need to change the system of appointment. On that two things were said, generally, the first the present system of the judges exercising this power this too has failed, the previous system where the government exercised that power, though few seemed to think that the previous system was much better than the existing system, but clearly that was also not satisfactory and I think there is virtual unanimity on that as well. The most important thing said about appointments was that whatever the system is it should be totally transparent. One fine day you learn that so and so has been appointed the judge of the High Court or the judge of the Supreme Court not even recommended, but notified as being appointed the judge of the High Court or Supreme Court. Now very often this kind of opacity precludes the possibility and very often that's a real possibility of people having information that a particular fellow is corrupt and I have evidence to show he is corrupt.

One issue that many people raised, which was not detailed in the background paper is that the system of appointments is not merely opaque but there is just no system. After all when appointments are made by the UPSC there is some system, even in England there is a Judicial Appointments Commission/Committee, which first whenever a requirement is given to them to select some judges of some court –they first draw up what are the requirements for the job, what are the characteristics that we want in a person that we want to be appointed as a judge of this Court. So the criteria's is first laid out, again a system is laid out how they will be evaluated, who are the people who would be evaluating them? Then the marks are totaled up and thereafter, the person is selected. In India at least for appointments to the higher judiciary, the High Court or the Supreme Court no such system is followed and therefore, that leads to greater possibilities of nepotism, greater arbitrariness, totally ad hoc system of appointment. Whatever the system of appointment, it must be transparent, whether you have confirmation hearings of the kind that are held through the Senate sub-committee in the US. Even if you don't have that kind of process of confirmation hearings, you must

certainly have a system by which the criteria is laid out, the method of grading them on that criteria is laid out and selection is done on some rational basis and thereafter, during the process of appointment people are allowed to depose before the appointments commission or any such body created for the purpose.

Another more or less unanimous consensus to emerge was the need for this appointments committee to not be totally controlled by the judiciary or the executive, therefore, the need to have an independent body, which finally makes the appointments. On the issue of contempt, in the background paper we have argued that there is a need to delete this provision of scandalizing the court and lowering the dignity of the court from the definition of criminal contempt in the Contempt of Courts Act. I think most speakers said that this amendment of truth does not go far enough. Certainly we need further amendment to the Contempt of Court Act, Mr. Ram Jethmalani pointed out that during the formulation they had in fact agreed upon in the Parliamentary Committee anything, which is true or believed in good faith to be true by the person who has written it should not be contempt. Perhaps a majority of the people who spoke on the issue felt there is no reason for retaining this power to punish for scandalizing the court and lowering the dignity of the court, it is quite adequate to restrict it to anything, which presents a clear and present danger to the administration of justice. This whole issue of judicial accountability should go beyond the confines of the courts, lawyers and even the government. It must be debated widely across the country, particularly among common citizens, consumers of justice, the people who are really affected by the collapse of the judicial system. Its good that people represented here, today, are from a very wide cross section of civil society in this country.