

People Power

Physician, Heal Thy Self!

The proposed National Judicial Commission (NJC) and amendments to contempt law raised serious debate on judicial accountability.

People have great respect for judiciary, and in general our faith in judiciary has been vindicated as rule of law has become integral to our democratic process. Undoubtedly there have been several distortions. The shocking inability of the Supreme Court to protect citizens' liberties from executive excesses has been amply demonstrated by an egregious verdict in Shukla vs ADM Jabalpur (Habeas Corpus case) during emergency (1975-77). The abnormal pendency of cases (25 million) in various courts made justice expensive and delayed. The incomprehensible procedures made it inaccessible to most ordinary people. Thanks to failure of justice system, rough and ready justice for a price has become the norm. There are increasing concerns about falling standards of probity in judiciary too. Ceaser's wife, alas, is no longer above suspicion!

Despite these distortions, most Indians tend to see judiciary as a knight in shining armour fighting for our liberty in the face of executive tyranny and legislative failure. In the first two decades after independence, most Indians believed that politicians, most of whom were freedom-fighters, could do no wrong. By late 60's the disillusionment with our political 'heroes' was evident as they proved to be men and women of clay. For the next two decades, the middle classes and media trusted the bureaucracy. If there was a problem, the IAS provided the solution; or so they thought! By mid 80's, the inadequacies, corruption and self-serving nature of bureaucracy were self-evident. Now it is the turn of the judiciary to be seen as the crusading arm of state, protecting the citizen and upholding liberty.

But a series of events in recent years rudely awakened us out of this complacency. The failure of Justice Ramaswamy's impeachment proceedings in Parliament on partisan and extra-judicial considerations, for all practical purposes, proved that errant judges cannot be removed. And then in a perverse interpretation the Supreme Court effectively held that in matters of judicial appointments, the opinion of Chief Justice is more or less final and binding. The judiciary appoints itself, and cannot be removed by anyone. This self-perpetuation and unaccountability created a Mullah Raj! Such a state of affairs is clearly unacceptable in a democracy. The consequences are predictable. A string of scandals – alleged involvement of judges in corruption in public service commission in Punjab, Shamit Mukherjee's complicity in the DDA scam, and brow beating of journalists who wrote about the Karnataka scandal – exposed and embarrassed the judiciary as never before. The contempt powers invested in judiciary, making the judge complainant, prosecutor and judge, further undermined notions of accountability.

Clearly, we need to restore the balance between executive, legislative and judiciary. The flaws of a democracy can be corrected by more and better democracy, but not by weakening democracy. Elected governments alone can be trusted with decision making because they represent the will of the people. The courts and constitutional functionaries are vital checks against abuse of authority, but cannot supplant elected governments and legislatures.

Three steps are needed to enforce judicial accountability. First, a NJC must be created as an independent body to appoint judges. The Venkatachaliah Commission recommended a five member committee, with three senior most judges, Law Minister and one person nominated by the President in consultation with Chief Justice. The government's proposal is very similar, except the fifth member is a nominee of the Prime Minister. The committee on judicial accountability, a body of independent jurists, suggested a NJC with five retired judges - a member each nominated by the Supreme Court, High Courts, government, opposition and Bar Council.

In a democracy, we cannot completely delink the NJC from the political process. Public interest may be best served if the government has two nominees, the opposition one, and the judiciary two. Such a collective body must function independently and its decision must be final. Such a committee must notify the names for consideration and hold public hearings, so that known corrupt or incompetent persons cannot be nominated to high judicial office through secret deals. There are far too many undesirable appointees already who do no credit to our constitutional offices.

Second, the NJC must also be empowered to remove a judge after due enquiry by a committee of peers. Given the failure to remove a single judge under articles 124 and 217, we need a simpler, transparent and effective mechanism to remove errant judges, but with adequate safeguards.

Finally, contempt powers of judges are anachronistic in this day and age. That even truth is no defence in contempt proceedings is a mockery of justice and fairness. In fact, the ordinary law of civil or criminal defamation is adequate to deal with any transgressions. Only weak institutions need crutches like contempt powers. Our judiciary is strong enough to preserve its dignity and protect its independence without draconian powers.

Jayaprakash Narayan

The author, a former civil servant is the National Coordinator of LOK SATTA movement.

E-mail: loksatta@satyam.net.in; url: www.loksatta.org