

Aam Aadmi Party

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Date: August 4, 2014

To,
Shri Ravi Shankar Prasad
Hon'ble Minister
Ministry of Law and Justice

Dear Shri Prasad,

Thank you for giving the Aam Aadmi Party (AAP) an opportunity to put forth its stand on the issue of the judicial appointments. The AAP is of the consistent view that the country needs a full time (and not an ex-officio) broad based constitutional body that would make appointments to constitutional courts in a transparent manner by calling for applications & nominations of candidates and evaluating them on set criteria. This body can be on the lines of the Judicial Appointments Commission (JAC) of United Kingdom (UK) which is also a full time body, which has adequate time, expertise and resources to select the best candidates. Once we consider the problems with the system of judicial appointments existing prior to 1993 and post 1993, the need for such a body becomes apparent to everyone.

As you are aware that the attempt to undermine the independence of the judiciary originated in 1973 after the landmark Kesavananda Bharti judgement of the Supreme Court. Mrs. Indira Gandhi then told her law minister that only those judges who are committed to the ideology of the government should be appointed. At that time, judges were appointed by the government in "consultation" with the Chief Justice of India as provided by the Constitution. The government then said that it was not bound by the advice of the Chief Justice. Successive Congress governments thereafter, appointed judges who had proximity to the government. The saying, that in order to become a judge, it was not important to know the law, but more important to know the law Minister, became the prevailing wisdom. The subversion of the independence of the judiciary by the appointment of convenient judges became a major issue, especially with increasing corruption within the executive.

Finally in 1993, the system prevailing at that time was reversed and the judiciary wrested the control in the matter of judicial appointments from the executive. The words "in consultation with the Chief Justice" was interpreted to mean, "with the concurrence of the Chief Justice". The meaning of Chief Justice was interpreted as, a collegium of Chief Justice plus 2 senior judges of the Court. A new elaborate procedure was laid out by the court for appointment of judges, in which the role of the government was reduced to returning a

name recommended by the collegium for reconsideration. If the collegium reiterated its recommendation, the President would have no option but to go through with the appointment. High Court appointments would also go through a similar procedure, except that the recommendations there would originate from the collegium of the High Courts.

In 1998, the Supreme Court further tweaked its judgment of 1993 in a Presidential Reference on this issue. The collegium was widened from 3 to 5 judges. Consultation with other judges in the court who came from the same High Court as the proposed nominee was also provided. But the control over the appointments continued to vest with the Judiciary.

This system of appointment of judges by the judiciary did lead to the depoliticisation of the judiciary to a large extent and did substantially improve its independence. But the process of appointments was still shrouded in secrecy and keeping the control over appointments with sitting judges, who had little time from their judicial work, coupled with the lack of transparency in such appointments led to nepotism and arbitrary appointments. No criterion for selection was laid down nor any system was devised to evaluate various candidates in the zone of consideration on any criteria. No system of inviting any applications or nominations was devised either. Thus the quality of appointments did not substantially improve even in this system. Even late Justice J.S.Verma, the author of the original judgment came to say that he did not anticipate that his judgment would lead to such poor appointments by the judiciary.

Faced with such a situation, the Committee on Judicial Accountability (a voluntary body of Senior Lawyers and retired judges) proposed a bill for the Constitution of a full time and independent body called the Judicial Appointments commission for the selection of judges to the High Courts and the Supreme Court. It was proposed that such a body could be constituted from among retired judges or other eminent persons who are selected in the following manner: The Chairman to be selected by the collegium of all judges of the Supreme Court. A second member by the collegium of all Chief Justices of the High Courts. A third member by the Union Cabinet. A fourth by collegium of the leaders of Opposition of the two houses of Parliament along with the Speaker of the Lok Sabha. A fifth by a collegium of the CEC, the CAG and the CVC. Each of these members of the judicial appointments commission would have a tenure of 5 years and would thus be independent of the government as well as of the sitting judiciary. This body would be mandated to function transparently and would have to publish the persons shortlisted for appointment for the information and comments of the people, before the final selection. Being a full time body, it would lay down the criteria for selection and would be mandated to go about its task in a structured and rational manner. The body would be given adequate staff and resources to do justice to its onerous work. AAP fully supports this Bill proposed by the Committee on Judicial Accountability.

However, neither the government nor the judiciary were interested in creating an independent full time body as exists in UK to select judicial appointees. A national judicial commission Bill of 2013 was eventually introduced by the UPA Government, which sought to create an appointments commission in which the appointments pie was sought to be divided almost equally between the judiciary and the government. The proposed

commission was supposed to have the three senior most judges of the Supreme Court along with the law Minister and two eminent persons nominated by a committee consisting of the Prime Minister, Leader of Opposition in the Lok Sabha and the Chief Justice of India. Thus the commission was still conceived as largely an ex-officio body of people who would have little time to devote to appointments and it did not lay down any standards of transparency either in the appointments. The AAP is of the firm view that this Bill, which lapsed with the dissolution of the Lok Sabha, is much worse than the existing system since it suffers from the vices of both the pre-1993 system and the existing system, and does not offer any improvement.

AAP, therefore, strongly urges that a the Government moves a constitutional amendment bill to create a full time (and not an ex-officio) broad based body that would make appointments to constitutional courts in a transparent manner by calling for applications & nominations of candidates and evaluating them on set criteria. The minimum level of transparency would require that the names of shortlisted candidates ought to be made public so that the public can send any evidence, if any, against any of the shortlisted candidate to the said body, which would then take that into account. The Bill suggested by the Committee on Judicial Accountability needs to be accepted.

Thanking You

Yours sincerely,



Arvind Kejriwal