

**Summary of proceedings of the Campaign for Judicial  
Accountability and Reforms workshop at Sambhaavnaa institute  
ON 26-27 OCTOBER 2012**

The Campaign for Judicial Accountability and Reforms and Sambhaavnaa Institute organised a workshop on "A JUDICIARY FOR COMMON PEOPLE: ACCESS, ACCOUNTABILITY AND EFFECTIVENESS" on 26-27 October, 2012. Prashant Bhushan (Convenor, CJAR), Prashant Kumar, Somesh Jha, Pranav Sachdeva, Neha, Pyoli, Advocates were among the participants apart from the volunteers of Sambhaavnaa Institute (*please give the names*).

There were extensive discussions on the following topics:-

1. Informal Courts: structure, functioning, jurisdiction and selection
2. Innovations in adversarial system
3. Higher Judiciary and Court Governance/Administration
4. Appointments and accountability of judges

**INFORMAL COURTS:**

The failure of Gram Nyayalayas was discussed. The Gram Nyayalayas were supposed to be such informal fora established at block levels and functioning without lawyers. Unfortunately the final Act brought all the formalities of civil and criminal procedure codes etc which would require lawyers moreover even these have not been established in most parts of the country till date. The existing courts are too few to deal with the volume of cases and many of them lack adequate infrastructure.

Certain cases like commercial cases, IPR etc need technical dispute resolution- these should go to formal courts and the rest should be decided by informal courts.

It was proposed that the informal courts should function on only one principle-"You will adopt any procedure which will enable you to dispense justice fast and which is in tandem with Principles of Natural Justice". Courts must ensure that all the parties are given an opportunity to present their case. If the agency of the lawyers is to be

done away with then maybe we need enablers like paralegals to help the litigants. Duty of paralegal staff would be to interact with litigants and determine whether their case is justiceable or not and then to tell them which papers to get as evidence.

We need to set up a management structure for these courts which can monitor which kind of cases go to which judges, how many cases are coming and how many a judge can efficiently dispense with in a day. If a presiding officer feels that certain cases are complex then he can send such cases to be tried in the formal courts. If a person takes a false plea then he should be imposed with severe costs. If a particular bench has a particular jurisdiction then it can be given a 2 months course in that particular area.

Checks on arbitrariness- Rules were made to minimise discretion; nowadays there is technology to ensure that discretion is not abused- videography should be made compulsory for all courts. These videotapes should be randomly checked. A separate body (Accountability Commission) can look into allegations of impropriety/corruption against the judges. Since the procedural rules are being minimised therefore we need stringent rules to fix the accountability of these judges. Order should be reasoned. One right of appeal should be given and appellate court should be at district level. We should study other countries where such systems are in place so that people can get convinced that alternative informal systems are possible.

## **FORMAL COURTS AND INNOVATIONS IN ADVERSARIAL SYSTEM:**

Once informal courts are put in place, load on formal courts will be lessened. Complex disputes and commercial cases should go to formal courts. For commercial cases, state subsidy should be minimal. There should be stricter court fees/ costs to prevent abuse.

Use of technology- Audio-video conferencing, videography of proceedings, service delivered by SMS/audio message. We can have solar operated kiosks in villages which can dispense such information.

Collaborative justice: Lawyers should minimise points of dispute and only the points which can't be resolved should be taken to court.

## **HIGHER JUDICIARY AND COURT GOVERNANCE/ADMINISTRATION:**

At present 0.2% of GDP is spent on justice delivery system, it should be at least 1%.

There is an absence of transparency in structure and infrastructure of courts. High Courts have to administer lower judiciary but no concrete and transparent rules exist. CJI can manipulate the justice dispensing system by tweaking the bench formation.

There should be institutes for judicial policy. Rule of law literature is investment oriented and there have been very miniscule number of studies on why rule of law should be established for poor oriented and equity of resources oriented system.

Constitutional Courts should be bifurcated from Appellate Courts to ensure that constitutional bodies do not abuse their power. HC and SC can be the two public law courts and there can be 4 benches of the apex appellate court for private law cases-this has also been recommended by the Law Commission.

## **APPOINTMENTS AND ACCOUNTABILITY OF JUDGES:**

Appointment system needs to be overhauled. Cause lists and daily orders need to be analysed to find out how judges are performing. Judiciary cannot be made directly accountable to people since there is a fear of it succumbing to majoritarianism. Maybe 10-15% weightage can be given to vote of bars for selection of judges since they know the system from inside. BCI should be overhauled to make lawyers accountable and licenses cancelled for indulging in malpractice. Selection should be made by a broad-based committee which is independent (of executive and judiciary) and transparent.

Appointment to lower judiciary should be made at the central level having a cadre like Indian Judicial Service so that it is properly

selected and merit based. Cadres can be state-wise though selection can be central.

Names of candidates should be displayed on websites and comments/objection should be invited from the public.

Apart from competency, sensitiveness, judicial temperament and commitment towards the directive principles should be evaluated for prospective judges.

Accountability: The Judicial Standards and Accountability Bill seems to be driven by the belief that the judiciary must be essentially accountable to itself though it seeks to induct some people from the executive in the bodies as well. Thus the judicial oversight committee, which would receive complaints against judges, would be a body comprising of the former Chief Justice of India, a sitting judge of the Supreme Court, a sitting judge of the High Court, the Attorney General and one "eminent person" nominated by the President. This means three persons in the judiciary, including two sitting judges, and two persons from the executive. Moreover three out of the five members are ex officio, being very busy in their official work. The oversight committee is therefore neither independent of the government nor the judiciary. Moreover they can hardly devote adequate time to the task of looking at complaints against all judges of the higher judiciary. Even worse is a provision in the Bill requiring a complaint to be sent to the scrutiny committee consisting of two sitting judges and a retired Chief Justice of the same court. This will make it virtually impossible to the scrutiny committee to give an unbiased report against a person who is, and has been, a professional colleague and brother judge on the bench at the same court.

The last nail in the coffin of judicial accountability is driven by a provision which makes it an offence for anyone, including the complainant, to disclose the details of his complaint against a judge or the details of the proceedings before the committees. Moreover, a complaint held to be frivolous or vexatious by the oversight committee would land the complainant in jail for up to 5 years. The process is therefore virtually designed to ensure that no credible complaints would be made to these committees and at any rate it is far from certain that complaints would be examined in a credible manner that inspires public confidence.

We instead propose a full time independent constitutional body which could be called the Judicial Conduct Commission which would have disciplinary power over judges of the higher judiciary. This 5 member Commission would be selected in a broad based and transparent manner- Chairman selected by a collegium of all the judges of the Supreme Court; 2<sup>nd</sup> member by a collegium of all the Chief Justices of the High Courts; 3<sup>rd</sup> member by the Union Cabinet; 4<sup>th</sup> member by a collegium of the Speaker of Lok Sabha, Chairman of Rajya Sabha and Leaders of opposition of both houses of the Parliament and 5<sup>th</sup> member by a collegium of Chairman of NHRC, Chief Election Commissioner, CAG, CVC and CIC. The selection by each collegium would be done in a transparent manner. This is likely to ensure that at least a majority of the members would be people who could be trusted to be strong and independent.

Database on a judge should be maintained (by videography etc) to analyse how many cases he disposes off, how long does he sit on a

reserved judgment, how he conducts his court etc. The videotapes should be randomly checked by the Accountability Committee/Commission.

Accountability should work on preventive, curative and punitive measures. Ultimately, the judge's self-interest should coincide with the public interest.