

## Calcutta Notebook

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THE SAD STATE OF THE judicial system is seen in the huge pendency of cases. Advocates complain that the quality of judgments is fast deteriorating. Persons of doubtful integrity are being elevated to the High Courts. Most Political parties have expressed themselves in favour of establishing a National Judicial Commission. Presently complaints of corruption etc. against the judges are heard by a collegium of the Chief Justice and senior most judges of the Supreme Court. Proposal is to establish a separate Commission for the same. Chairperson of the Commission will be Chief Justice of the Supreme Court and members will be appointed by the government from among the judges of Supreme Court and High Courts. Another proposal is to additionally appoint few prominent citizens. The Chief Justice along with senior judges of the Supreme Court presently watch over the conduct of the judges. The Chief Justice along with judges appointed by the government will do the same under the new dispensation. The critical role of the Chief Justice remains *unchanged* in both situations. The difference is regarding the other members.

Former Chief Justice Mr Lahoti had raised questions regarding the need of such a Commission. He felt that the present system was adequate. This appears to be an unnecessary debate. The main problem is that the Judges are dependent upon the support of the government in acquiring their position. The shadow of the government looms large upon their career. Whether the members of the Judicial Commission will be the senior most judges of the Supreme Court or be appointed by the government make minor difference.

A farmer of Jodhpur explained the problem in these words: "He cannot do justice who takes salary for giving judgment. Justice can only be done by one who is independent." The 'panch' were not provided any salary in Indian tradition. This writer had the opportunity to observe the justice system in a slum in Bangalore some years ago. The people used to collect whenever there was a dispute. Five elders from among those present were selected as panch. No voting was made for their selection; nor were they appointed by the President of the slum. They were selected by consensus among those present. The panch got no salary for their efforts. Such judges can deliver justice because they are not dependent upon any particular person for their position.

The judges are appointed by the government in Indian Constitutional system. All persons involved in the process are associated with the government in one way or the other—President, Chief Justice, Law Minister, Governor, Chief Minister, etc. Such people occupy this position that is liked by the government. Their selection is likely to be in favour of the view held by the government hence they may not be able to provide undiluted justice.

Another question is about the accountability of the judges. The panch of the slum were accountable to the people present. The people could ask them to explain the logic of their decision. They have to invest time and money and got nothing in return. They may even lose their social status if the judgment is wrong. They have little incentive to do injustice.

The Judges of courts are not accountable to the people in the present system. The junior judges are accountable only to their seniors. The senior judges are accountable only to themselves.

There is a need to understand the traditional thinking on this issue. Sanskrit scholar Ila Ghosh explained the system in a seminar. She quoted Kalidasa to show the government could be kept in check by the following methods: (1) Knowledge or learning; (2) Teaching by a teacher; (3) Criticism; and (4) Curse given by the sadhus. The judiciary cannot use these instruments. It does not provide learning to the government. The judiciary is not the teacher of the government. The judiciary can criticize the government but its dependence for salary and promotions upon the government prevents it from doing so. The judiciary does not have the knowledge of giving a curse. Thus the judiciary cannot control the government and cannot provide justice to the people.

The need is to establish a system in which the judiciary is accountable to the people, not the government. The judiciary should be free of government's interference if it has to deliver justice. One possibility is to appoint chiefs of professional associations as members of the Judicial Commission. There are associations of doctors and lawyers in Medical Council of India and Bar Council of India. Similar associations of farmers, traders, scientists and teachers can be made. The chiefs of these associations could be appointed to the Judicial Commission. The members of such a Judicial Commission will draw their right from their members, rather than from the government's largesse. They may, therefore, be able to stand up to the government or corrupt judges. The slum dweller could ask the panch about the logic of their decision in a particular case. Similarly, the chief of the farmers association would be able to ask the judges about the logic of their decision.

It must be conceded though that appointment of the members of the Judicial Commission by the government will be worse than appointing the senior most judges. Appointment by the government will make it more likely that judges will decide in favour of the government in order to increase their chances for appointment to the Commission. It is better to appoint the senior most judges to the Commission because the Law Minister does not determine who will be the senior most judges. It is more likely that persons of integrity not liked by the government may become members of the Commission. However, the internal nature of the governance system remains in such dispensation.

It is good that a Judicial Commission is established. But the members of the Commission should be selected from among the chiefs of professional associations of doctors, lawyers, farmers, traders, scientists, teachers and other professions. Other alternatives can be explored which are free of government interface. The same holds for the appointment of the Lokpal.

Objection may be raised that the chiefs of these professional associations may not have the knowledge to oversee the working of the judiciary. This fear is baseless. A judge who has studied commerce sits in judgment over a most complicated case relating to the medical profession. Similarly, the chief of the doctors association is capable of giving judgment on the working of the judiciary. There is greater value to independence of the members of the Judicial Commission than to their legal knowledge. □□□