

Lok Pal and Judiciary

A key aspect of the current debate about Lok Pal is about whether the Judiciary should be brought under the jurisdiction of Lok Pal. This issue figured prominently even in the consensus-building effort 'Round Table on Lok Pal' held in New Delhi, on April 24, 2011.

There was a broad consensus among the participants that the accountability and probity in higher judiciary should be ensured, but through a separate and powerful mechanism of National Judicial Commission (NJC) along with the accountability framework as provided by the Judicial Standards and Accountability Bill (2010). A panel of eminent jurists comprising of Justice MN Venkatachaliah, Justice JS Verma and Justice VR Krishna Iyer, with Foundation for Democratic Reforms' initiative has prepared a viable model of National Judicial Commission after detailed examination of the issue and extensive deliberations.

Judiciary, the most trusted Indian institution:

Our nation-builders have acted with great foresight in creating an independent judiciary and nurturing it with respect and care. As a result, judiciary is among the most respected institutions in our country today. It is this trust and confidence that make the general public yearn for judicial resolution of many conflicts and contentious issues.

The broad national consensus that contentious issues like Ayodhya are best left to the judiciary is a tribute to the credibility and trust the higher courts enjoy in our country. On other critical questions like reservations, inter-state disputes and the application of Article 356 or Tenth Schedule of the Constitution, the mature and balanced role of Courts in reconciling various interests and upholding the spirit and letter of the Constitution has been of inestimable value in dousing flames of passion and prejudice, and bringing peace and harmony to society.

Independence, impartiality, integrity and competence of the judiciary are at the core of our Constitutional order. Higher Judiciary has been accorded a central role in our state structure as a vital institutional safeguard to defend the Constitution, protect liberty of citizens and check the abuse of authority.

An extremely complex, diverse, federal polity which is struggling to reconcile short-term expediency with long-term imperatives of nation building needs a credible, independent and impartial judiciary. The nation has so far been well-served by the judiciary.

But, recent distortions in Judiciary:

But certain distortions and glaring inadequacies are endangering the credibility of higher judiciary. In recent years, several credible allegations have been leveled against individual judges. While the judiciary on the whole is conducting itself with admirable dignity and propriety, the actions of a few black sheep are damaging the entire institution.

Now is the time to press for genuine judicial reform; an honest judiciary enjoying full public confidence is clearly the need of the hour.

Judiciary under Lok Pal feasible?

- But ensuring judicial accountability cannot be by a fledgling institution i.e. Lok Pal.
- Instead, judicial accountability must be achieved by a strong, credible and independent institutional mechanism in the form of a collegium of existing constitutional functionaries.
- This is even more important in light of the fact that following the *Kesavananda Bharati* judgment, the Supreme Court (SC) has the power to interpret the basic structure of the Constitution. And the SC has been jealously guarding the independence of judiciary.
- On top of it, judges have cloaked themselves with additional immunity in Justice R. Veeraswamy case, to the effect that even an FIR or any crime committed by a Judge, can not be registered against him without the prior permission of the Chief Justice of India.
- No doubt, the SC would therefore carefully scrutinize the wording and structure of proposed Lok Pal; any framing of the Lok Pal institution that is interpreted by the Supreme Court as running against the grain of the basic structure would not pass muster.

Independent, Empowered National Judicial Commission, the best way out:

Foundation for Democratic Reforms (FDR), a non-partisan research-and-advocacy body serving the cause of fundamental democratic reforms has launched the initiative on judicial reforms. As a part of this effort, and in order to better persuade the judiciary, three Esteemed Justices of unimpeachable integrity and unassailable moral authority and stature – Sri Justice MN Venkatachaliah, Shri Justice JS Verma and Sri Justice VR Krishna Iyer have come together following FDR's initiative. After long and detailed deliberations, they have unanimously agreed upon the following judicial reforms:

- **Creation of a National Judicial Commission (NJC) for transparent appointments to the Supreme Court and High Courts. This mechanism would combine the input from the elected branches of the government and the judiciary and chaired by the Vice President.**

- **Replacing the present, cumbersome and unsatisfactory constitutional mechanism of impeachment (under Art.124 (4)) with a more effective mechanism for removal of errant judges, functioning under the NJC framework.**
- **Creation of an All India Judicial Service (AIJS) envisaged by the Article 312 of the Constitution and on par with the other all-India services like the IAS, for attracting the best available talent at the threshold of the subordinate judiciary, which is at the cutting edge of our justice delivery system.**

The above proposals mesh harmoniously and synergistically with the provisions contained in the *Judicial Standards and Accountability Bill, 2010*, now in the Parliament. Together, they create a permanent, independent and empowered body to ensure judicial accountability in the form of National Oversight Committee and Scrutiny Panels.

These proposals were forwarded to the leaders of the Government, Opposition, and political parties who have responded favourably.

What about Lower Judiciary?

As far as lower judiciary is concerned, the High Court is fully empowered to enforce accountability, integrity and probity as per the provisions of Art. 235 of the Constitution. In recent years, the High Courts of Rajasthan, Maharashtra and West Bengal have exercised these powers to great effect. The Mumbai High Court directed the removal of about 150 subordinate court judges on grounds of corruption in the past couple of years. High Courts in Rajasthan and West Bengal also acted similarly to remove several tainted judges in subordinate courts. And in every single instance of appeal, the Supreme Court upheld the High courts' decisions.
