

Foundation for Democratic Reforms

12th June 2015

Hyderabad

Hon'ble Justice Jagdish Singh Khehar

Judge, Supreme Court of India,

6, Motilal Nehru Road,

New Delhi – 110011

Esteemed Shri Justice Jagdish Singh Khehar ji,

Sub: Writ Petition (civil) No. 13/2015 – Supreme Court Advocates on Record Association and Another vs Union of India – Reg.

Foundation for Democratic Reforms (FDR) is an independent, non-partisan think tank and reform advocacy group dedicated to rule of law and independence of judiciary. FDR took the initiative to bring together in 2010 three of India's most credible and renowned jurists of unimpeachable integrity – Shri Justice VR Krishna Iyer, Shri Justice MN Venkatachaliah, and Shri Justice JS Verma to suggest a viable model for judicial appointments and a satisfactory mechanism for removal of errant judges and examine the need for Indian Judicial Service. It is their joint recommendation that formed the basis of FDR's advocacy for National Judicial Commission. We kept the leaders of Government and Parliamentary Opposition informed of this exercise throughout.

We attempted to file an application for intervention, after duly serving the same on the concerned parties, before the Honourable Supreme Court Bench hearing the constitutionality of the 99th Constitutional Amendment in order to bring to the Court's notice the circumstances and rationale which informed the recommendations of the three distinguished jurists. The Honourable Court decided not to entertain the intervening petition. Therefore, I feel it is my duty to bring the facts and circumstances to your notice to facilitate deeper examination of this weighty Constitutional issue. The enclosed documents are self-explanatory.

I would like to bring to your notice the deep concern of many thoughtful citizens committed to independence of judiciary. Judiciary is the most respected institution in our country today. Eminent judges and jurists enhanced the dignity, prestige and credibility of the higher judiciary through exemplary leadership and flawless conduct. It is this public trust and confidence that make the general public yearn for judicial resolution of many conflicts and contentious issues. Highly polarizing issues like Ayodhya dispute, caste reservations and inter-state disputes cannot be resolved through partisan politics. The role of judiciary is particularly critical in the context of erosion of legitimacy of many state institutions and diminished public faith.

In this background, it is vital that credibility of higher judiciary is preserved at all costs. While the judiciary on the whole is conducting itself with admirable dignity and propriety, the actions of a few black sheep and elevation of a few undeserving persons are damaging the whole institution. So far, the mechanisms for judicial appointments have proved to be inadequate in elevating the best and brightest

to the bench. Certain allegations against individual judges in recent years by prominent members of the bar, and the eloquent silence of all sections of society, indicate that judiciary is increasingly vulnerable to attack on account of indiscretions and malfeasance of a few individual judges. If the credibility of the higher judiciary is undermined further, there is a real danger of the nation falling apart. When complex and contentious issue like reservations or Ayodhya create conflict, we need the Court to stand as the last bulwark of freedom and constitutionalism. An independent National Judicial Appointments Commission and an all-India Judicial Service are of critical importance in this regard.

In all democratic nations, the executive and the legislature are involved in recommending appointments to judiciary and in constituting appointment commissions. Though the various commissions in different countries differ in authority, structure and procedures, a single feature holds true for all of them – public confidence is high in judicial appointment and oversight processes that use commissions.

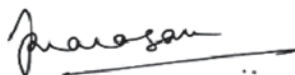
It is vital to recognise that judicial appointments are a matter of great concern for the whole nation, not merely for the judiciary. As the legitimate elected representatives of the nation, the executive and legislature have to play their rightful role in judicial appointments. The perception that higher judiciary is appropriating the sole power of recommending judicial appointments undermines both democratic legitimacy and credibility of judiciary. And a direct and open standoff between the Parliament and the Supreme Court on this issue will only undermine our Constitution and democracy, and is wholly avoidable at all costs.

Once a Commission of judges, executive and eminent lay persons is desirable and constitutional, then clearly the details of composition of such a commission have to be left to the legislature. The only issue that is open for judicial scrutiny is whether the composition and criteria for selection are rational, transparent and non-arbitrary.

I am enclosing the relevant documents for your careful consideration to facilitate your decision on this matter of momentous significance to our constitutional order. I have every confidence that the verdict of the Supreme Court will uphold the letter and spirit of the constitution and democratic values, and will ultimately enhance the credibility, competence and independence of the higher judiciary.

With warm regards,

Yours sincerely,



Jayaprakash Narayan

General Secretary

Encl:

1. Joint views of Shri MN Venkatachaliah and Shri JS Verma, former Chief Justices of India, endorsed by Shri VR Krishna Iyer, former Judge, Supreme Court of India.
2. Letter from Shri Justice VR Krishna Iyer, former Judge, Supreme Court of India.
3. My letter to Prime Minister dated 6th August 2012.
4. The discussion paper that served as backgrounder to the eminent jurists.