

# A historic non-impeachment

## *An all-round system failure*

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May 11, 1993 will be remembered as a black day for Parliament and for the judiciary in this country. For on that day, 205 Lok Sabha members belonging to the Congress(I) and its allies sabotaged the impeachment motion against Justice V. Ramaswami of the Supreme Court by abdicating their constitutional duty of voting for or against and thus defeating the motion by ensuring that it did not receive the support of an absolute majority of the total membership of the House.

Each one of the 196 MPs who voted, all belonging to the Opposition parties, voted for the removal of the judge. Thus, despite the motion for removal being passed unanimously by the members who voted, it failed, bringing to a close the more-than-two-year old proceedings for the removal of Ramaswami. The result, therefore, is that despite a high-power inquiry committee of three eminent judges having come to the conclusion that Ramaswami was guilty of several acts of gross misbehaviour which warranted his removal, the judge is still entitled to discharge judicial functions from the highest court of the land. It is another matter that after the impeachment motion failed, Ramaswami was persuaded to resign by the Congress(I) which belatedly realised that it would have to pay a heavy price for being seen to have supported a corrupt judge.

The failure of the motion, especially after the tortuous course it went through, raises several grave issues for the future of the administration of justice in this country and indeed for probity in public life in general. But before going into these issues, let us briefly recapitulate the history of this saga.

Ramaswami was appointed Chief Justice of the Punjab and Haryana High Court on November 12, 1987 and continued as such till October 8, 1989 when he was elevated to the Supreme Court. In April/May 1990, reports appeared in the press about the huge and extraordinary nature of the expenditure incurred by Ramaswami for his official residence when he was Chief Justice at Chandigarh and the audit objections thereto. This greatly disturbed members of the Bar and MPs, who voiced their concern to the then Chief Justice of India, Justice Sabyasachi Mukherjee. After deep consideration of the matter, on July 20, 1990, the Chief Justice announced in open court that he had advised Ramaswami to "desist from discharging judicial functions so long as the investigations continued and until his name was cleared in this aspect."

Ramaswami went on leave and remained on leave for the next five months. Thereafter, the Chief Justice constituted a committee consisting of Justices B. C. Ray, Jagannath Shetty and M. N. Venkatachalaiah of the Supreme Court seeking their advice on the question "whether the involvement of Justice V. Ramaswami in certain proceedings in relation to certain administrative decisions and certain other administrative acts and omissions as Chief Justice of Punjab and Haryana High Court would render it embarrassing for him to function as a judge of the Supreme Court of India."

This committee submitted its report on November 8, 1991, to Chief Justice Ranganath Mishra, who succeeded Sabyasachi Mukherjee on his demise. It said that only if an inference of moral turpitude became inescapable could the judge be considered disentitled from discharging judicial functions. The committee further advised the Chief Justice "to consider whether such unseemly controversy could be put to rest by requesting Justice Ramaswami to make good the value of these items (which were allegedly misappropriated by him) without prejudice to his stand and contentions in the matter."

On this report, Ranganath Mishra ended the five-month leave of Ramaswami who resumed work in December 1990. Soon thereafter, however, further articles and reports appeared in the press, detailing the various acts of financial malfeasance and outright misappropriation of goods from his official residence by Ramaswami. This led to an unprecedented resolution by the Supreme Court Bar Association on February 1, 1991, calling for the impeachment of Ramaswami and calling upon the Chief Justice not to assign him any judicial work.

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On February 27, 1991, 108 members of the Lok Sabha belonging to the Bharatiya Janata Party, the National Front and the Left parties submitted a notice of motion to the Speaker calling for the removal of Ramaswami. The Constitution and the Judges (Inquiry) Act, 1968, require such a motion to be signed by at least 100 members of the Lok Sabha or 50 members of the Rajya Sabha. Eleven charges, all relating to the gross abuse of his financial and administrative powers as the Chief Justice of the Punjab and Haryana High Court and to criminal misappropriation of property, were made in this notice of motion. It was supported by a mass of documents which were mostly audit reports of the Punjab and Haryana High Court, the Accountant-General's office and the reports of a committee of district judges appointed by the High Court to look into these matters.

Interestingly, while the motion was pending with the then Speaker, Rabi Ray, who was empowered to admit or reject it, a delegation of senior Congress MPs, which included P. V. Narasimha Rao, called upon Rabi Ray to plead against the admission of the motion. They, however, gave no reasons why, and on the Speaker giving them time, offered to give their objections in writing. No such objections came, however. Instead, Rabi Ray received a call from Rajiv Gandhi who pleaded with him not to admit the motion "since he (Rajiv Gandhi) had sent Justice Ramaswami to the Punjab High Court to ensure that terrorists were not granted bail by the courts in Punjab and Justice Ramaswami had fulfilled that assurance." Interestingly also, in the debate on the motion in the Lok Sabha, both Buta Singh, former Home Minister, and Kapil Sibal, who appeared for Ramaswami, pleaded on behalf of the judge on the ground that he had agreed to go to Chandigarh when no other judge was willing to go to the terrorism-affected area.

Rabi Ray admitted the motion on March 12, 1991, just before the dissolution of the ninth Lok Sabha and as mandated by the Judges (Inquiry) Act, constituted a committee of Justice P. B. Sawant of the Supreme Court, Chief Justice P. D. Desai of the Bombay High Court and Justice O. Chinnappa Reddy, retired judge of the Supreme Court, to inquire into the charges. The committee, however, could not begin its work since the then Law Minister, Subramanian Swamy, and the then Attorney-General, G. Ramaswamy, advised the Government that the impeachment motion had lapsed on dissolution of the House and the Government refused to issue the necessary notification.

This provoked a body of advocates of the Supreme Court, called the Committee on Judicial Accountability, to file a petition in the Supreme Court to direct the Government to issue the notification. In October 1991, the Supreme Court decided that the motion had not lapsed and that the inquiry committee was properly constituted. It was only thereafter that the inquiry committee could begin its work and by January 14, 1992, after examining all the audit reports and other documents, it formulated a charge sheet containing 14 charges and communicated them to the judge for his response.

Ramaswami did not respond to the merits of the charges but proceeded to question the jurisdiction of the inquiry committee, hurled absurd accusations at its members and even held a threat of blackmail to his brother judges in the Supreme Court saying he knew about the lack of rectitude and integrity of others in the Court and that he could wash dirty linen in public if he was left beleaguered.

With the repeated and emphatic communications by Ramaswami that he would not submit to its jurisdiction, the committee proceeded with the inquiry without his direct participation. Though he did not participate in the proceedings directly, he did so through the proxy of a Congress MP from Tamil Nadu, M. Krishnaswamy. Through the same proxy, Ramaswami filed a petition in the Supreme Court challenging the jurisdiction of the inquiry committee and the procedure adopted by it. The Supreme Court declined Krishnaswamy's request to stay the proceedings of the inquiry committee while it continued hearing the petition. That Krishnaswamy was acting as a proxy was clear not only from the fact that Kapil Sibal was also his counsel, but also because the entire correspondence between the judge and the committee had been supplied to him by the judge.

The inquiry committee, after examining the documents and a large number of witnesses who were permitted to be extensively cross-examined by counsel for Krishnaswamy, prepared its report by June 30, 1992. The submission of the report was, however, delayed on account of another petition filed by Ramaswami's wife in the Supreme Court seeking that the judge be supplied with a copy of the report before it was submitted to the Speaker. By a common judgment, the Supreme Court, while dismissing Krishnaswamy's petition on the ground that he did not have *locus standi*, declined the request of Ramaswami's wife but held that Ramaswami would have an opportunity to challenge the report before Parliament and would have a further opportunity of judicial review even after Parliament had voted for his removal and he had been removed. On July 20, 1992, the report of the inquiry committee was submitted to the Speaker but curiously it was tabled in the House by the Speaker five months later, in December 1992.

The report was unanimous, unequivocal and very strong in its condemnation of Ramaswami. He was found guilty on 11 of the 14 charges, some in part and some in full. And the charges on which he was found guilty did not merely relate to extravagant spending or breach of financial rules, but of fraud and worse. Thus, on the very first charge, the committee held that "the far too extravagant and wasteful expenditure on furniture, furnishings and electrical appliances at his official residence and the manner in which the purchases of furniture and carpets were effected from the same favoured dealers without obtaining genuine quotations and, therefore, without ascertaining whether the price paid was fair and reasonable, sometimes against advance bills and against cash payments in large sums, and in disregard of the financial rules were such as

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to bring dishonour and disrepute to the judiciary so as to shake the faith and confidence which the public repose in the institution."

Even on the charges which were held not proved, the committee mostly gave Ramaswami the benefit of doubt or let him off on a finding that though what he had done was wrong, it had also been done previously. Thus, on the fantastic expenditure of Rs. 9.1 lakh on his residential telephones during the 22 months of his tenure, the Committee, while observing that his predecessor had incurred an expenditure of merely Rs. 38,000 for a longer period and that Ramaswami's expenditure in each month exceeded the expenditure of his predecessor for two years, still absolved him of this charge saying, "However, in view of the want of clear evidence with regard to the use of the telephone for his personal purposes, it is not possible to hold beyond reasonable doubt that Justice Ramaswami obtained any personal gain." Similarly, on the charge of giving several undeserved out-of-the-way promotions in breach of rules to a set of favoured officials, the committee, while finding the charge to be factually true, held as follows: "It appears, however, that there was a practice in the High Court of Punjab and Haryana for the outgoing Chief Justice to create additional posts and also to give promotions. The practice has to be deprecated. However, in view of its existence and in the circumstances mentioned by us earlier, we are not in a position to say that the charge of out-of-turn and unlawful promotions to a favoured group of officers by way of reward in wilful abuse of power is established beyond reasonable doubt."

Though the Budget session of Parliament started in February this year, the Speaker placed the impeachment motion before the House only at the fag end of the session, on May 10. After the opening speech of Somnath Chatterjee of the Communist Party of India (Marxist) recommending the adoption of the motion, counsel for the judge, Kapil Sibal, was by an unprecedented procedure allowed to address the House.

Sibal made a six-hour presentation, hailed for its eloquence, by which he sought to show that there was no substance in the charges found proved by the committee and that many of them in any case were trivial. He ridiculed the motion for the removal of a judge "for purchases of a few pieces of carpet or a few suitcases." By referring to various statements made by the judge in his reply sent to Parliament and to various documents filed by him in his reply, Sibal sought to demonstrate that the charges could not stand. Sibal's lengthy presentation was heard by a packed House and it impressed many.

When the House rose at the end of Sibal's presentation, the Congress(I) found itself in a dilemma. Even before the motion was taken up, a substantial section of Congress(I) MPs from Tamil Nadu had issued a statement calling upon the leadership to defeat the motion. Among the reasons they gave were that the charges were frivolous and trivial, that the removal of the judge who had been appointed by Rajiv Gandhi would besmirch his memory and finally that the people of Tamil Nadu would not appreciate the hounding out of office of a fellow Tamilian. In the final run-up, some other MPs, some belonging to the Rajiv Gandhi faction and some from Punjab and Haryana, joined the Tamil Nadu MPs in support of the judge. A few others, impressed by Sibal's presentation, also came out in support. On May 11 morning, when the debate resumed, and the speeches of the Opposition members in support of the motion began, the Congress(I) MPs seemed evenly divided on how to vote.

When Janata Dal leader George Fernandes began his rebuttal of Sibal's submissions, the effect of his speech had made it clear that most of the MPs had not read the report of the inquiry committee. In a virtuoso performance lasting over two hours, Fernandes tore down the defence of Sibal by reading extensively for the first time in the House the report of the inquiry committee, and showed that Sibal had, in fact, taken the House for a ride. He demonstrated that despite treating him with fairness and indulgence, the committee had been forced to conclude that the judge had not been truthful on many occasions. He was not just indicted for making wildly extravagant purchases but for making these from a set of favoured dealers by obtaining bogus quotations.

Fernandes pointed out that the judge who had been made out by Sibal to be a saintly man of simple habits living alone in Chandigarh, had in fact spent Rs. 11,000 on towels alone for his residence, Rs. 40,000 on bath, table and bed linen, and had been running residential phone bills of almost Rs. 2,000 a day. "And we had been told by the judge's counsel that the judge is a very simple man, all of whose relatives were living in America," remarked Fernandes, and added, "but perhaps that (America) might explain the extravagant phone bills."

The discomfiture of Ramaswami lobbyists became obvious during Fernandes' speech. When Fernandes read out about how Ramaswami had been grossly misusing his staff cars, Law Minister H. R. Bharadwaj put his foot in his mouth by getting up to say, "We should be honest about this. We are all doing it." He later tried to wriggle out of it when he was asked to speak for himself.

The last person to speak on the debate was again Somnath Chatterjee who, after demonstrating the fairness of the committee to the judge and the judge's abominable behaviour which had itself been held to constitute misconduct, ended with an exhortation that Parliament was on trial on this historic motion and that the very survival of public confidence in the judiciary and indeed in democracy itself was at stake.

With the highly effective speeches of Fernandes and Somnath Chatterjee, it became clear to Congress(I) managers that an official vote against the motion would be suicidal for their public image. On the other hand, the relentless campaign and pressure of the Tamil Nadu MPs and some others made it clear that if it allowed a conscience vote, as it had officially stated, the party would be split down the middle and the impeachment motion would still go through. This, the Prime Minister seems to have calculated, would not only mar the image of cohesiveness but undermine his authority within the party. That seems to have been the calculation

on which Narasimha Rao finally decided, towards the end of the debate, to direct the party MPs to abstain from voting. Just as the voting time approached: party managers hurriedly carried the Prime Minister's oral whip to the MPs. Some of them were seen coming to Narasimha Rao's seat to protest, but were reportedly told to abstain from voting, as he had directed, or get out.

When the galleries were cleared and the division was called, the board showed only green lights from the Opposition benches and white lights from the Congress benches and their allies, especially the All India Anna Dravida Munnetra Kazhagam (AIADMK). With 196 votes for, no votes against it, and 205 abstentions in a House with 401 members present and an effective strength of more than 500, the motion failed. The Constitution requires that a motion for the removal of a judge be carried by a special majority of not less than two-third of the members of each House present and voting and an absolute majority of the total membership of the House. Thus, with not a single vote against the motion, the motion failed.

The reaction among the people, reflected in the press, was that of shock and revulsion. There was unanimous and strong condemnation of the Congress(I) even by those sections of the press which were generally supportive of the party. The party managers, it seems, had as a face-saving formula worked out a deal with the Ramaswami lobbyists that he would resign immediately after the motion was defeated. But, after the motion fell, Ramaswami seemed to have changed his mind; he gave an interview to *The Pioneer* saying that there was no question of his resigning. Seeing this, sections of the Congress(I), including Andhra Pradesh Chief Minister Vijayabhaskara Reddy, began to come out openly against the party's decision to abstain. Further pressure was put on Ramaswami, and on May 14, he finally announced that he would shortly be resigning. His statement, however, went on to make the brazen assertion that the failure of the motion had vindicated his stand and that by his actions he had ensured that no honest judge would hereafter be hounded out by a motivated and malicious smear campaign. It would have been more appropriate for him to have said that he was resigning after ensuring no corrupt judge would be impeached hereafter.

What are the consequences and lessons of the failure of the impeachment motion? The consequences for the Congress(I) seemed to be already apparent to the party managers who were looking for face-saving formulas such as getting the judge to resign now and recover the misused public funds from him. There is no doubt the image of the Congress(I), or whatever left of it, would receive a severe blow. It was neatly summed up by a cartoon in *Indian Express* which showed a billboard saying: "Bofors, HDW, Bank Scam, Judicial Corruption." Besides this was the "Hand" (election symbol of the Congress) and the legend, "Whenever you see corruption, think of us." The Congress would find it difficult to explain its action and live it down; the Ramaswami affair threatens to become as big an issue symbolising corruption in high places as Bofors had become.

But beyond the consequences for the Congress(I), the failure of the motion has undoubtedly dealt a mortal blow to public confidence in the integrity of the judiciary and to probity in public life in general. The message which has gone out to the people is that there is no accountability for judges and if you happen to be a judge you can get away with anything. The people will realise that nothing can be done about it in the present system. And that unfortunately also is the signal that this will send to the judiciary as well. No judge is likely to be impeached so long as the provisions for impeachment remain unchanged. In Ramaswami's case the motion could be supported by documentary evidence because the misbehaviour related to purchases which were all documented.

Thus, despite a well-documented motion being submitted, despite its admission by the Speaker, despite its survival through several attempts made to scuttle it through the courts, despite a high-power judicial committee finding the judge unanimously and unequivocally guilty and despite not a single vote being cast in Parliament against the motion, it failed. This will undoubtedly lead to a sharp increase in judicial corruption. Not only this, it will undoubtedly also send the wrong signal to all public servants. If this kind of misdemeanour and abuse of office is condonable for a judge of the highest court who is expected to maintain a higher standard of rectitude and integrity, obviously others will be encouraged to do worse.

The lessons for the nation from this episode are clear. The present system in the Constitution for removal of judges has undoubtedly failed and has been shown to be completely outdated and ineffective. An entirely new machinery is urgently required to restore accountability of the judiciary and to check the falling standards of judicial rectitude and integrity. There must be a permanent judicial body empowered to investigate complaints against judges and discipline them after due inquiry. This body must have a machinery at its disposal to investigate credible complaints made to it against judges and even lay traps, whenever required, to apprehend them red-handed. It is important, however, that this body, though judicial in nature, must be as independent of the judiciary as it must be of the executive.

The Ramaswami episode has also demonstrated that often the bonds of judicial brotherhood transcend considerations of rectitude or propriety. Five successive Chief Justices who have been in office since the impeachment motion against Ramaswami was admitted have continued to allow him to discharge judicial functions despite the obvious loss of public confidence in him on account of the impeachment motion. Three Chief Justices, including the present one, continued to assign him judicial work even after the publication of the report of the inquiry committee finding him guilty of gross misbehaviour. Obviously, the judiciary cannot be left to a self-disciplining mechanism which also failed in the Ramaswami affair .•