

INDIAN JUDICIARY & STATUS OF JUDICIAL ACCOUNTABILITY

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ABSTRACT

This paper focuses on the dire need to bring the judiciary under accountability. Judiciary is of great importance as people consider judges as god. In any country, the Judiciary plays the important role of interpreting and applying the law and adjudicating upon controversies between one citizen and another and between a citizen and the state. It is the function of the courts to maintain rule of law in the country and to assure that the government runs according to law. In a country with a written constitution, courts have the additional function of safeguarding the supremacy of the constitution by interpreting and applying the provisions and keeping all authorities within the constitutional framework.

For a very long time it was a sacred belief that judges are demi-god and no wrong would be committed by them and whatever their decisions may be they are final and unquestionable. But in present time it is hard to have a blind belief that everything is true because there is lot of corruption going on in the name of justice delivery. In short absolute power without accountability leads to corruption. It is no doubt result of lack of judicial accountability. Along with accountability, this paper would also look into the problems really faced by judicial accountability.

In a federation, the judiciary has another meaningful assignment, namely, to decide controversies between the constituent States inter se as well as between the Centre and the states and a federal government is a legistic government² a characteristic feature of which is allocation of powers between the Centre and the States. Disputes usually arise between the Centre and the constituent units relating to distribution of powers and the functions between them. An arbiter is, therefore, required to scrutinize laws to see whether they fall within the allotted legislative domain of the enacting legislature and this function is usually left to the judiciary.

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² Dicey, Law of the Constitution; Ch.III., 175(1996).

In India, in addition to the above, the judiciary also has the significant function of protecting and enforcing the Fundamental Rights of the people guaranteed to them by the constitution. Justice Untwalia has compared the Judiciary to “a watching tower above all the big structures of the other limbs of the state”.³

Key Words- Judicial Accountability, Judiciary, Judges

INTRODUCTION

We Indians have a government by the people, of the people and for the people'. And for that matter the Government should be accountable for all its acts or omissions to those for whom it exists. The judiciary is the third pillar of the government. The primary duty of the judiciary is to uphold the constitution and the laws without fear or favor, without being biased by political ideology or economic theory.⁴ Judiciary plays an important role in one's life, the power enjoyed by Judiciary and the task which really have great risks and responsibilities that it performs is incomprehensible. In other words it would be no magnification to say that of the three branches of the Government, Judiciary is one of the greatest importance to the people, it being closest to them in the sense that anybody even an ordinary citizen can approach the Judiciary when he has any atrocity or grievance. It's been considered that Indian Judiciary system is the most powerful judiciary in the world after USA.

Being a democratic nation, Indian Judiciary is vested with the most elevated power by the general population and is considered as most grounded mainstay of the majority rules system. Through Lawmaking body, Judiciary in India has been given incomparable forces which has prompted the non-responsibility of the legal to anybody. India Judiciary appreciates legal autonomy however this freedom now and again brings about abuse of the forces and benefits by the Judges. The freedom and unbiasedness of the Judiciary is one of the signs of the majority rule arrangement of the Indian government. The privileges of the individual can be ensured and can give break even with equity without dread and support just when there is an unprejudiced and free legal. The constitution of India gives many benefits to keep up the autonomy of legal.

³Union of India v. Sankalchand Himatlal Sheth, AIR 1977 SC 2328.

⁴PUCL v. Union of India, (2003) 4SCC 399.

Consequently, the idea of Accountability in these days is consuming issue. There was before a period when it was felt that the significant issues concerning Indian Judiciary were matters of freedom, residency, the arrangement procedure, and obviously, inquiries of execution and respectability. These issues no doubt keep on increasing however nobody can overlook the ocean change in emphasis that has occurred as of late.

JUDICIAL ACCOUNTABILITY

The word Accountable signifies "in charge of your own choices or activities and anticipated that would clarify them when you are inquired". Accountability is the essential necessity of democracy. Transparency opens the door for accountability. Every open establishment or open functionary has responsibility in spite of the fact that requirement of this may change contingent on the nature and capacities released by that specific office holder. As we discussed above the judiciary is an essential wing of the state and is also accountable.

The autonomy and fair-mindedness of the legal is one of the signs of the law based arrangement of the administration. Just a fair and free legal can secure the privileges of the individual and can give measure up to equity without dread and support. Accountability of the judiciary in respect of its judicial functions and orders is a kind of grant or privilege by provisions for appeal, reversion and review of orders.

Clearly, the concept of judicial accountability refers to making the judges answerable for their decisions in the court of law. On the off chance that we discuss judicial accountability and legal freedom both are complimentary to each other. In genuine, legal responsibility helps defend the autonomy and uprightness of the judges. Now and then legal responsibility can be confused as it is setting based. It is exceptionally hard to characterize legal responsibility and it must be acknowledged from the perspective of its destinations. It can be said to have three main functions:-

- Firstly, accountability in higher judiciary in India for its judgments, i.e. having the judges responsible for their decisions and to promote the rule of law.
- Secondly, to propel open trust in the legal aspect is with reverence to the institutional methods of appointing the Judges, abstraction of Judges and the inhibitions to the reapprove of their work but the, law of contempt of court"

- And lastly to promote institutional responsibility of the judiciary as a whole towards the public.

NEED OF JUDICIAL ACCOUNTABILITY

Legislative, Executive and Judiciary are the three organs basic in any country, and the Constitution does invariably deal with them, the Constitution may also create any other organ which it may regard as significant and fit for inscription in the constitution. A two judge bench of the Supreme Court citing Montesquieu has unqualifiedly stated the Montesquieu view of separation of power and the dangers involved in deviating from his view was an apt warning for the Indian Judiciary which has been “rightly criticized for ‘overreach’ and encroachment in the domain of the other two organs” i.e., the Parliament and the Executive. The court made certain observations about the limits of the powers of the judiciary as many cases came across where judges are unjustifiably trying to perform executive or legislative functions. In the name of judicial activism judges cannot cross their limits and try to take over functions which belong to another organ of the State.”⁵. What the Constitutional arrangements essentially states is that "there ought to be an unprejudiced nature and independency in legal body to articulate or proclaim judicially upon the issues and to go about as the mediator and watchman of the Constitution." All parts of Government have a place with the general population, when the lawmaking body and the official both are responsible, how the legal can stay unaccountable. No individual, howsoever high is exempt from the rules that everyone else follows also, no foundation howsoever sanctify or purified can claim to be unaccountable. By the day's end, each organization is responsible to the general population in each popularity based commonwealth like our own. In any case, in the meantime judicial freedom is a pre-imperative for each judge whose promise of office expects him to act without dread or support, warmth of hostility and to maintain the constitution and laws of the nation. In this way, here emerges a strain between Judicial Independence and Judicial Accountability.

The responsibility must be thorough to incorporate the government officials, as well as withal the civil servants, judges and everybody contributed with puissance. The legal framework

⁵Divisional Manager v. Chander Hass, (2008) 1 SCC 683.

manages the organization of value through the office of courts. The Judicial function stems from the feeling that a system based on a written constitution can hardly be effective in practice without an authoritative, independent and impartial arbiter of constitutional issues.⁶The conduct in which judges release their commitments decide the picture of courts and the noteworthiness of legal framework itself. In India from time immemorial judges have been held in high regard and venerated as super people however going over late occurrences portrays that disappointed by the inability to get equity, individuals are gradually losing confidence in legal and are taking law into their hands. This profoundly merits judgment. A need unquestionably is there to make legal responsible, as disparagement of qualities in legal is significantly more risky than in whatever other wing of the administration as legal needs to go about as the gatekeeper of our constitution. Legal responsibility and answerability of the judges is not another idea. The legal arrangement of the nation a long way from being an instrument for securing the privileges of the powerless and the mistreated has turned into an instrument of badgering of the average citizens of the nation. The framework stays broken for the feeble and poor people. A highly activist judiciary with an unlimited power of judicial review without accountability can create serious administrative problems. Tenured judges cannot be made accountable like the politicians and the executive. At the apex level the command of the judiciary are irreversible except by itself.

Accountability promotes the rule of law by deterring conduct that might compromise judicial independence, integrity and impartiality. It promotes public confidence in judges and judiciary along with the promotion of institutional responsibility by rendering the judiciary responsive to the needs of the public it serves as a separate branch of the government.

Transparency is facilitated through the process of accountability. The best way to achieve the accountability is when one is accountable to law. The subsisting systems of accountability have failed, and the incrementing corruption is decaying away the vitals of this branch of democracy. This lack of accountability has been best put forward by Pt. Nehru in a diatribe, “judges of the Supreme Court sit on ivory towers far abstracted from mundane men and ken nothing about them.” The demi god’s image has to be superseded, after all judges are withal humans capable of making mistakes and committing vices. The quandary in making the

⁶Dowling, Cases and Materials on Constitutional Law; 19 (1965).

judiciary accountable is discussed below which will avail us in understanding the issue and later find solutions to achieve it.

STATUS OF JUDICIAL ACCOUNTABILITY IN INDIA

Our composers of the Indian Constitution would not have envisioned that inside 61 years of the confining of the Constitution, the Indian Judiciary would develop as one of the most intense establishments of the State. The Constitution set up the High Courts and the Supreme Court as a watch of organizations, free of the official and the governing body, to not only dispense equity, but rather likewise to ensure that the official and the lawmaking body did not surpass the specialist regarded them by the Constitution. Consequently, the Judiciary was given the forces to elucidate the laws and the Constitution, and furthermore to strike down official activity which abuses any law or the basic privileges of residents. It was additionally the specialist to examine whether laws encircled by Parliament complied with the Constitution and announce them void in the event that they damaged it. By explanation of the arrangement approving the Parliament to correct the Constitution, the SC likewise procured the ability to let down even established revisions which were held by the Court disregarding the fundamental structure of the Constitution. Numerous such laws have been struck around the Courts amid this period. Through this, the unrivaled courts in India have developed as maybe the most powerful courts on the planet, practicing for all intents and purposes Imperial and unchecked potencies. While official activity and even enactment could frequently be struck around the courts, the headings of the courts, in some cases issued without even notice to the influenced parties, were certainly, and needed to be complied with by all executive officers on pain of contempt of court. Of course, often these potencies were sagaciously exercised to rectify gross executive inaction.

While the Court was gaining these forces, by a considerably more imaginative elucidation of the arrangement identified with the arrangement of judges by the administration, it assumed control over the energy of arrangement of judges. Along these lines judges of the SC and High Court are presently selected by a collegium of senior judges of the Supreme Court. In this way the legal has turned out to resemble a self-executing government. There is no hard run framework followed in the determination of judges and there is no straightforwardness at all in the framework. Specifically, no view is given to analyzing the record or capabilities of

judges in their ideological confidence to the sacred standards of a communist, mainstream, equitable, republic or their comprehension towards the average folks of the nation who are poor, irrelevant and unfit to battle for their rights in the courts.

Consequently, the courts in India appreciate outright and unchecked power inimitable by any Court on the planet. In such conditions, it is totally essential that judges of the unrivaled legal be responsible for their execution and their direction whether it be for defilement or for nonchalance of the privileges of residents. It's dismal to see that no law has made any establishment or framework to look at the execution of judges and analyze objections against them. The Constitution gives that High Court and Supreme Court judges can't be expelled aside from by indictment. Experience has demonstrated that it is difficult to evacuate a Judge through reprimand regardless of the possibility that one can get narrative proof of genuine unfortunate behavior. This is on account of MPs and political gatherings to which they have a place are extremely hesitant to go up against a sitting Judge on the grounds that for all intents and purposes every one of them have pending cases in courts. The judges frequently carry on like an exchange union and don't warmly embrace brethren being blamed for unfortunate behavior. It is, in this way, for all intents and purposes difficult to get an indictment off the ground unless the issue has turned into a major open embarrassment. Notwithstanding when assertions against judges are upheld by narrative proof, once in a while get any scope in the media due to the broad dread of hatred of court. The hatred law in India permits any judge of the High Court and Supreme Court to accuse any of criminal disdain and send him to imprison, on the ground that he/she has "scandalized the Court or brought down the specialist of the Court". Our battle for Judicial Accountability has since long been requesting that the courts' energy to rebuff for "outraging the specialist of the Court" must be taken away by enactment. This request has been effectively opposed by the courts who assert that erasing this arrangement would support outlandish charges and manhandle of judges by disappointed disputants and would along these lines breakout general society trust in the courts.

Be that as it may, at that point, there is the law of maligning to ensure judges against attack. In addition, open trust in the courts as in any individual or establishment, is produced or disintegrated by the activities of the courts and not by any unmerited charges by disappointed defendants. Be that as it may, with such savage resistance by the courts, the lawmaking body has not had the boldness to erase this arrangement from the Contempt of Courts Act. This has

likewise expanded the exemption of judges who have now got used to the inclination that they can escape with any sort of unfortunate behavior or even criminal lead, with no dread of any criminal activity or activity for evacuation. Furnished moreover with the energy of scorn, they additionally have little dread of open introduction. This makes for a disturbing picture of absence of responsibility of the higher legal in India. You can't basically make any disciplinary or criminal move against wrongdoing or violations perpetrated by judges. In the event that you uncover them freely, you risk hatred. This absence of responsibility combined with the huge unchecked forces that the courts have gained and are practicing make the legal an extremely perilous foundation and in fact a genuine danger to Indian popular government. This absence of responsibility has prompted significant debasement of the higher legal which is clear from the current spate of legal outrages which have ejected in India. The current report of TI on debasement discernment list demonstrates that the legal is seen to be the second most degenerate organization in India after the Policy.

JUDICIAL ACCOUNTABILITY & PROBLEMS FACED BY IT

The general population hold an awesome stake in the organization of equity. Regardless of the estimation of legal responsibility in any free majority rule republic, the legal in India is, best case scenario totally unaccountable to any organization in the nation. Many elements have added to this desperate circumstance and the issue of responsibility is wide and complex.

- THE CONTEMPT OF COURT

Contempt of court is committed when a court is scandalized by casting “unwarranted, uncalled for and unjustified aspersions on the integrity, ability, impartiality or fairness of a judge in the discharge of his judicial functions as it amounts to an interference with the due course of administration of justice.⁷ Contempt of court is characterized either as civil or criminal. Any wilful disobedience of a court order or to abstain from doing any act is a civil contempt. Any non-compliance of the court order.⁸ Civil contempt arises when the power of the court is invoked or exercised to enforce obedience to court orders.⁹ A person is said to be

⁷ Chetak Construction Ltd. v. Om Prakash, AIR 1998 SC 1855.

⁸ Rajiv Choudhary v. Jagdish Narain Khanna, (1996) 1 SCC 508.

⁹ Delhi Development Authority v. Skipper Construction (1995) 3 SCC 507.

guilty of criminal contempt when his conduct tends to bring the authority and administration of law into disrespect or tends to interfere with or prejudice litigants during litigation.¹⁰ Availability of an independent judiciary and an atmosphere wherein judges may act independently and fearlessly is the source of existence of civilization in the society. The writ issued by the court must be obeyed. It is the binding efficacy attaching with the commands of the court and the respect for the orders of the court which deter the aggrieved persons from taking the law in their own hands because they are assured of an efficacious civilized method of settlement of disputes being available to them wherein they shall be heard and their legitimate grievances redeemed. Any act or omission which undermines the dignity of the court is therefore viewed with concern by the society and the court treats it as an obligation to zealously guard against any onslaught on its dignity.”¹¹

- APPOINTMENT OF THE JUDGES

Before 1993, the President’s power to appoint the Supreme Court Judges was purely of a formal nature. For long the practice in India had been to appoint the senior most Judge of the Supreme Court as the Chief Justice whenever a vacancy occurred in that office. In 1958, the law commission criticized this practice on the ground that a Chief Justice should not only be able and experienced Judge but also a competent administrator and, therefore, succession to the office should not be regulated by mere seniority.¹²

Originally under Art.124(1), the strength of the court was fixed at one Chief Justice and seven other judges. But parliament has given power to increase the number of judges beyond seven [124(1)]. This number has been increased progressively to 25 by the enactment of the Supreme Court (Number of Judges) Act, 1956, amended in 1977 and again in 1986 and lastly in 2009.

The question of selection and appointment of the judges is crucial to the maintenance of independence of the judiciary. In 1991, a three judge Bench of the Supreme Court expressed the view that consistent with the constitutional purpose and process, as expressed in the

¹⁰ D.C.Saxena v. Chief Justice of India, AIR 1996 SC 2481.

¹¹ Om Prakash Jaiswal v. D.K. Mittal, AIR 2000 SC 1136.

¹² Law Commission, *XIV Rep.*, I,39-40 (1958).

Preamble to the constitution. The role of the institution of the CJI be recognized as of crucial importance in the matter of appointment to the Supreme Court.¹³

Subsequent to Subhash Sharma Case, the question of the process of appointing the Supreme Court Judges came to be considered by the Supreme Court in *S.C. Advocates on Record Association v. Union of India*¹⁴ public writ petition was filed in the Supreme Court by the lawyers' courts. The court considered the question of the primacy of the opinion of the Chief Justice of India in regard to the appointment of the Supreme Court Judges. It was emphasized that the question has to be considered in the context of achieving "the constitutional purpose of selecting the best suitable for composition of the Supreme Court "so essential to ensure the independence of the judiciary, and, thereby, to preserve democracy."¹⁵

Thus in the matter of Supreme Court Judge, the primary aim ought to be to reach an agreed decision taking into account the views of all the consulters' giving the greatest weight to the opinion of the Chief Justice. When decision is reached by consensus, no question of primacy arises. Only when conflicting opinions emerge at the end of the process, the question of giving primacy to the opinion of Chief Justice arises, "unless for very good reasons known to the executive and disclosed to Chief Justice of India, that appointment is not considered to be suitable."¹⁶

Usually a collegium headed by the Chief Justice of India involving senior most judges of the High Court separates and prescribes the assignments to the Regime for arrangement. The Regime may request that the collegium reevaluate the groups. Yet, on the off chance that the collegium returns back with a similar suggestion, the Regime can't yet request that the President acknowledge the proposal. The entire method is specially appointed and discretionary. There is no certain grounds as indicated by which the judges are suggested. There is such a mystery going around the entire business as usual.

- DISCIPLINARY PROCESS OR MECHANISM

There is basically no disciplinary component to manage grumblings against the judges. The in house component is a worthless attempt of conveying the judges to value. Prosecution is

¹³Shubhash Sharma v. Union of India, AIR 1991 SC 631, 641.

¹⁴ AIR 1994 SC 268.

¹⁵AIR 1994 SC.

¹⁶M.P.Jain, Indian Constitutional Law, (7th ed. 2014).

excessively astringent a punishment and can't, regardless of the possibility that viable, be the response to each sort of misbehavior and wrongdoing on the segment of the Judges. Arraignment resembles a correctional code giving just to one extraordinary punishment, and capital punishment and that's it. Over and over, the Regime has tried to authorize a bill acquiring power an advantageous disciplinary instrument yet bombed pitifully.

The Judges Inquiry Bill, 2006, suggested the constitution of a National Judicial Council with forces to research grumblings against the judges and prescribe appropriate activities. It recommended that the dissension be endorsed to be made by anybody against any judge of the Supreme Court or the High Court aside from the Chief Equity of India. The individuals from the board would be the Chief Equity of India, two senior most Supreme Court Judges and two High Court Judges. In the event of a dissension presented against a Supreme Court Judge it would include the Chief Equity of India and four senior most judges of the Supreme Court. An objective for a National Judicial Commission was withal felt which would be an autonomous researching body to examine grievances against judges and make disciplinary move. No draft charge has still been finished up till now.

We require a workable system for restraining blundering judges and it ought to constitute both remedial and corrective measures. Variations of impropriety ought to be managed in an unexpected way. For this imply responsibility can be isolated into three sorts. Right off the bat, aggregate or institutional responsibility. In such a case the legal is responsible all in all and as a different organ of the administration. Also, behavioral responsibility where a judge is in charge of his individual activities both in office and out of the workplace (legal and additional legal). Indeed, even certain additional legal episodes may ponder appallingly the perfection of a man to propagate as a Judge. These may be activity in private limit of the individual yet verbalize about the character and honor of the individual. Thirdly, decisional responsibility whereby a judge is whole in charge of the legal choices he takes. It is this sort of approach that is required towards the bind of responsibility in the legal framework.

- IMPEACHMENT

The question of removal of a judge before the age of retirement is an important one as it has a significant bearing on the independence of the judiciary. If a judge of the Supreme Court

could be removed by the executive without much formality, then it can be imagine that the court would loses its independence and become subject to the control of the executive.¹⁷In every democratic country special provisions are made for the removal of judges. In Britain, judges can be removed only on an address from both the houses of parliament.¹⁸ The constitution also makes a provision for the removal of Supreme Court judge.¹⁹He may be removed from the office by the president on an address by both houses of the parliament presented in the same session for proved misbehavior²⁰or incapacity. The address must be supported by a majority of the total membership of each house, and also by a majority of not less than two thirds of the members of each House present and voting. The constitution leaves it to the parliament to settle and lay down by law the detailed procedure according to which the address may be presented and the charge of misconduct or incapacity against the Judge investigated and proved.²¹

SUGGESTIONS

Constrained resistance for activities identifying with legal commitments ought to be set up. Disciplinary tenets ought to determine that the legal completes introductory thorough examinations of all charges. Rigorous and demanding norms should apply to the reflection of a judge. On the off chance that there is a finding of defilement, a judge is obligated to arraignment. A code of legal direct suits as a manual for and measure of legal conduct, and ought to be produced and executed by the legal. Breaches of the code must be explored and endorsed by a legal body. “Rule of Law is the antithesis of arbitrariness, it seeks to maintain balance between the opposing notions of individual liberty and public order. Such harmonizing can only be attained by the existence of independent courts which can hold the balance between citizen and the state and compel governments to the law.”²²An autonomous judge's sodality, chosen by judges, ought to speak to them in their collaborations with the state and its different organs. It ought to be available to all judges; bolster singular judges on

¹⁷M.P.Jain, Indian Constitutional Law, (7th ed. 2014).

¹⁸S.A.Smith, Constitutional and Administrative Law, Page No.353, 362(1997).

¹⁹Constitution of India; art.124, cl. 2, proviso (b); art.124, cl. 4 and art. 124, cl. 5.

²⁰C.K.Choudhary v. O.P.Gupta, AIR 1971 SC 1132.

²¹Constitution of India; art.124, cl. 5.

²²A.D.M.Jabalpur v. S.Shukla, AIR 1976 SC 1207.

moral issues; and give a sheltered perspective for judges who expect that they may have been traded off somehow.

CONCLUSION

Expansive reforms are necessary in current judicial system. The judiciary has to be technologically developed and more modernized. Moreover, the judicial system needs to be more close and accessible to common man. And the long and time taking procedural formalities need to be reduced considerably. An independent body, unshackled by judicial or executive influences, has to be set up to look into the matters of accountability. The root problem of judicial corruption is the very appointment procedure. If its procedure is democratic, fair and transparent, the quality of judges appointed will undoubtedly be superlative. The judicial system serves the people in a democracy and is not above the Law. And law and morality should not be considered independent of each other. Integrity, impartiality, high morality, honesty, freedom from bias and influence, and a keen sense of social responsibility are a few important qualities must in a Judge.