

# Judicial Accountability in India

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**Abstract:** At the outset, one needs to understand and appreciate the idea of demanding judicial accountability. As stated earlier, accountability primarily entails instilling a sense of transparency, subjecting the judicial regime to a strict public scrutiny so as to prevent any judicial delinquency from infiltrating. At the same time, the long-standing debate between accountability impinging upon the independence of judiciary often becomes imperative to be addressed. An interesting observation surrounding the innate resistance between the two has been drawn from the Constitution as the Constitution makers did not expressly provide for any mechanism to make the judiciary accountable. The underlying presumption behind the same was to prevent the violation of the fundamental edifice of judicial independence; a prerequisite for a free and fair judiciary to exist.<sup>1</sup> The objective sought to be achieved was to promote accountability through a mechanism of self-regulation without compromising the facet of independence.

**Keywords:** Judicial Accountability, India.

## I. INTRODUCTION

*“The judge infuses life and blood into the dry skeleton provided by the legislature and creates a living organism appropriate and adequate to meet the needs of the society.”*

- Justice P.N. Bhagwati

## II. JUDICIAL ACCOUNTABILITY: A THEORETICAL UNDERSTANDING

It is rather interesting to note that it has only been in recent times, that a public outcry for holding the judiciary accountable has been a matter of public debate and deliberations in all corners of the world, thereby making it a global phenomenon. As Justice Sir Moti Tikaram of Fiji notes, judiciary is “no longer a sacrosanct and inviolable sanctuary of its occupants.”<sup>2</sup> While the debate regarding the need for judicial accountability has gained significant momentum in the recent years with civil society and the media, assuming the role of alert watchdogs, a question to ponder upon often has been the need for judicial accountability.

**In its Comments on the Judges Enquiry Bill 2006, the Committee on Judicial Accountability noted that the dire need of an accountability mechanism stems from the over-assertiveness of the judiciary to the extent of declaring themselves immune from any form of enquiry into their actions. Such a reprehensible and autocratic practice makes it all the more onerous to ensure that an accountability mechanism be operative as it is imperative to note that Judiciary is about the law and not above the law. Accountability is imperative as, inter-alia judges are appointed in most countries and thus the public at large has no control over them. Also, there are hardly any provisions disciplining the judges and this is deeply associated with what Rowat terms as “arrogance of office” leading to the arbitrary use of discretionary powers.**

## III. JUDICIAL ACCOUNTABILITY IN INDIA

A Judge like every other public servant and Political Administrator is expected to exhibit good moral character and maintain purity of judicial administration. All the eyes of the citizen are, therefore, focused on the judges’ who is judged not only through his performance but also through his actions. His conduct in and out of the Court Hall is liable for accounting and explaining to the citizen at large. In fine, the principle that Justice should not only be done but also should appear to have been done prevailed all through the ages explains fairness as a part of accountability.<sup>3</sup>

Hindrances to speedier and informal access to justice can be considered as ‘un-Indian’. The king in the ancient India ensured compliance with every applicable law and restored the *status quo ante* the violation. The administrative process was informal and quick and it was regarded as part of the duty of the king to strictly and impartially enforce law. It was his duty to protect the people at any cost. The king was punishable a thousand times more than the common man for any violation of law. Rank imposed heavier obligations to inflict heavier punishments for failure of duty. Even the Chief Justice would be punished as severely as the king for violation of law. Clearly, it was the duty of the State to ensure compliance with every law. The subject had to inform the king of the injury or wrong and thereafter it was the duty of the king to render speedy justice strictly in accordance with law. It is a matter of history how these native ingenuities and devices for speedy delivery of justice were lost in the quagmire of power and the state became less and less concerned about approximating the ‘is’ to the ‘ought’.<sup>4</sup>

Judicial accountability, therefore, is the process by which the judiciary is responsible to the people on whose behalf it exercises the judicial power under the Constitution and the law of the country. In understanding the concept of judicial accountability, distinction should be made between the conduct of the judge in the discharge of his judicial function and the actual judicial decision or determination. Accountability relates to the former and not the latter except

<sup>1</sup> R.S. Pathak, “Administration of Justice and Public Accountability”, 15 *INDIAN BAR REVIEW* 213 (1988).

<sup>2</sup> Sir Moti Tikaram, “Public Accountability – Who Judges the Judges?” 19 *COMMWL.BULL.*1231 (1993).

<sup>3</sup> Sri B.L.N. Swamy, “Judicial Accountability” 74 *Cuttack Law Times* 17 (1992).

<sup>4</sup> T Devidas and Hem Lall Bhandari, “Judicial Accountability” 48(1) *JILI* 95 (2006).

where the decision is the product of judicial misconduct. This is because there are or ought to be mechanisms for the supervision of his judicial decisions or determinations.

#### IV. THE INDIAN APPROACH

The Institution of judiciary in a democratic setup is perhaps one of the most important organs as it is entrusted with the great responsibility of administering justice, one of the core needs of the citizenry. The Preamble to the Constitution enshrines the ideals of securing social, economic and political justice to all its citizens. Justice, failed to be meted out in a fair manner, jeopardizes the interests of the civil society, vitiating the principle of rule of law. An independent judiciary can be stated to be the cornerstone of a democracy. In *Union of India v. Sankalchand Himmatlal Seth*,<sup>5</sup> Untwalia J. called the judiciary as a “*watching tower above all the big structures of the other limbs of the state from which it keeps a watch like a sentinel on the functions of the other limbs...*”.

It is needless to say that the judiciary and the judicial decisions, over the years, have shaped the Indian polity to a great extent. The role played by the judiciary has been pivotal in ensuring a process of fairness in governance and administration. Thus, be it the pragmatic interpretation of Article 21 or propounding doctrines of equality, the judicial decisions in India have infiltrated through every strata of the society. While many of these decisions are laudable, in recent times, allegations, questioning the integrity of this great institution have multiplied. Lack of accountability and the alleged wide spread corruption have endangered the spirit of democracy, calling into question the integrity of the conscience keepers of the law.<sup>6</sup>

A procedure for removal of judges of High Court and Supreme Court by way of address of the Houses of Parliament to the President is contained in Constitution of India (process of impeachment under Article 124 (4) of the Constitution on grounds of proven misbehaviour or incapacity). However, the process is very cumbersome. It is said about impeachment proceedings that it is easier to amend the Constitution than to impeach a judge. It provides the procedure, where two third of the members of each House of Parliament may vote for the removal of judge. So far, only one Impeachment proceeding has been initiated against a Supreme Court judge. It failed because Congress abstained from voting and consequently two thirds majority was not available. In 1990 for the first time the impeachment proceedings were initiated against Justice Ramaswamy, Chief Justice of Punjab and Haryana High Court for misconduct and financial irregularities. These incidents clearly reflect that our Impeachment process is cumbersome, time consuming and tends to get politicized. There is now a general consensus that some recent incidents have exposed the inadequacy of existing provisions. In *K. Veeraswami case*, it was observed that remedy lies in suitable legislation for the purpose of preserving the Independence of Judiciary free from likely executive influence while providing proper and adequate machinery

for Investigation into allegations of corruption against such Constitutional functionaries.

**The Judges Inquiry Act, 1968** lays down the procedure for the investigation and proof of the misbehaviour or incapacity of a judge of the Supreme Court or of a High Court and for the presentation of an address by Parliament to the President and for matters connected therewith. On May 7, 1997, an in-house mechanism for judicial accountability was adopted wherein three resolutions were adopted by the S.C. which consisted of restatement of values of judicial life, declaration of assets and an internal mechanism to enquire into allegations of misbehaviour of judges.

**The Bangalore Principles, 2002** were developed by the Judicial Group on Strengthening Judicial Integrity, by a group of senior judges from eight African and Asian common law countries. The Bangalore Principles set out six core values that should guide the exercise of judicial office, namely: independence, impartiality, integrity, equality, propriety, and competence and diligence. The weakness of the Bangalore Principles lies in their enforcement. There are two major problems in enforcement. First, the Bangalore Principles of Judicial Conduct are not contained in a binding document under international law. States are not bound to comply with their provisions in the same manner that they are with regard to international treaties. Second, the Bangalore Principles appear to offer guidance to members of the judiciary, rather than to set out directly enforceable standards of behaviour, and therefore may not have a direct impact on improving judicial conduct. The standards contained are not expressed in a manner that enables their direct application or incorporation into domestic law as enforceable rules of conduct. In terms of implementation they simply call upon national judiciaries to adopt effective measures to provide implementation mechanisms if they are currently not in existence.

The Bangalore principles, 2002 also affirmed the Restatement of values. These resolutions provided the framework for the needed legislation to cover the field. The internal mechanism lacks legal sanctity and is inherently weak. The only two punitive actions are withdrawal of work and transfer of judge.

In 2005, India got one of the most liberal and powerful RTI Acts in the world. It permits disclosure of internal notings and correspondence of public officials, has few exemptions from disclosure, creates an independent appellate body to decide disputes regarding refusal of information. It also provides for penalties against arbitrary and malafide refusal to disclose information. It applies to all public authorities including the judiciary.

**The Judges(Inquiry)Bill of 2005** proposes introduction of ‘complaint procedure’ in addition to the earlier ‘reference procedure’ contained in the 1986 Act. In a ‘complaint procedure’ a complaint can be made by any person to Judicial Council against Judges of the Supreme Court (except the Chief Justice of India), Chief Justices and Judges of High Courts. In the ‘reference procedure’ if there is a motion by members of Parliament in either House, the

<sup>5</sup> AIR 1977 SC 2328.

<sup>6</sup> Shayonee Dasgupta & Sakshi Agarwal, “Judicial Accountability And Independence : Exploring The Limits Of Judicial Power” 2 *NUJS L. REV.*779 (2009).

Speaker/Chairman can make a reference to judicial council for enquiry not only against the above judges but also against the Chief Justice of India.

In view of the Law Commission, one of the serious omissions in the Bill of 2005 is the absence of a power in the Council to impose 'minor measures' under the 'complaint procedure', where the charges which have been proved do not warrant removal but amount to "deviant or bad behaviour" which warrant only 'minor measures'. (Of course, in the case of a reference by the Speaker/Chairman on a motion for removal, the judicial Council cannot impose or recommend any 'minor measures'). In such cases in UK, USA, Canada and Germany, the Judicial Council or similar bodies have been empowered to impose variety of 'minor measures'. 'Minor measures' were also advocated in the Report of 2001 by the National Commission for Review of the Constitution of India. Imposition of 'minor measures' is held Constitutional in other countries even though not provided in the Constitution: A question has arisen in the U.S. and Canada whether in the absence of a Constitutional provision permitting imposition of 'minor measures', imposition of such measures by a Judicial Council would be Constitutionally valid? The federal judiciaries in US and Canada in their judgments have upheld the imposition of such 'minor measures' by a judicial Council.

Though **The Judges (Inquiry) bill 2006** was drafted which proposes to establish a National Judicial Council to conduct inquiries into allegations of incapacity or misbehavior by High Court and Supreme Court judges; it could not see the light of the day. The proposed National Judicial Council would consist of Chief Justice of India, two Supreme Court judges and two High Court Chief Justices to investigate High Court judges or Chief Justice of India and four Supreme Court judges to investigate Supreme Court judges. The bill provides that National Judicial Council (NJC) shall investigate complaints submitted by any person or upon receiving a reference from parliament. If allegations are proven, the NJC may impose minor measures or recommend the removal of the judge. Removal of a judge shall be through Impeachment.

With the **Judges (Declaration of Assets and Liabilities) Bill, 2009** being introduced as part of the ambitious reformist agenda of the government, there arose hope of some positive change in this direction. The Bill tried to further judicial accountability by making disclosure of the assets and liabilities of the judges mandatory. The bill creates an in-built system by which the disclosure will have to be made only to the respective Chief Justices, thereby ensuring Judicial Independence.

**The Judicial Standards and Accountability Bill, 2010** providing for a mechanism to deal with complaints against judges of High Courts and the Supreme Court was tabled in the Lok Sabha on December 1, 2010 by Law Minister Veerappa Moily. At present, there is no legal mechanism for dealing with complaints against judges, who are currently governed by 'Restatement of Values of Judicial Life,' adopted by the judiciary as a code of conduct without any statutory sanction. The enactment of the bill will address the growing concerns regarding the need to ensure greater accountability of the higher judiciary by bringing in more transparency and would further strengthen the credibility of the Judiciary. The Bill sets judicial standards

and makes judges accountable for their lapses and mandates judges of the High Courts and the Supreme Court to declare their assets and liabilities, including those of their spouses and dependents and to file an annual return in this regard. The Bill mandates that judges should not have close association with individual members of the Bar and not allow any member of their immediate family to appear before them in courts. Judges should not contest any election to any office of club, society or other association, except those associated with the law or any court. Further, they should not have any bias in judicial work or judgments on the basis of religion, race, caste, sex or place of birth. This most recent Bill that is put forth for consideration seeks to replace the Judges (Inquiry) Act, 1968. It seeks to: (a) create enforceable standards for the conduct of judges of High Courts and the Supreme Court, (b) change the existing mechanism for investigation into allegations of misbehaviour or incapacity of judges of High Courts and the Supreme Court, (c) change the process of removal of judges, (d) enable minor disciplinary measures to be taken against judges, and (e) require the declaration of assets of judges. Judges in the form of holding someone in contempt.

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