
JUDICIAL ACCOUNTABILITY IN INDIA

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ABSTRACT

To begin, it is necessary to comprehend and accept the concept of judicial accountability. Accountability essentially includes developing a feeling of transparency in the legal system and subjecting it to rigorous public scrutiny in order to avoid judicial delinquency from penetrating. Simultaneously, the long-running argument about accountability continues. Infringing on the independence of the judiciary is a problem that has to be addressed. However, judicial independence cannot stand by itself, something like judicial accountability must also be there. The conflict arises because the Constitution authors did not directly provide a mechanism to hold the judiciary accountable. The reason for the same was to prevent violation of judicial independence which is an essential to build and free and fair judiciary. The goal moving forth is to promote accountability through a self-regulation method without jeopardising independence.

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

The meaning of accountability, literally and in general sense, is the sense of being answerable to someone. Accountability is sine qua non of democracy. Accountability is aided by transparency. No public institution or public functionary is immune from responsibility, albeit how accountability is enforced varies depending on the nature of the office and the functions carried out by the office holder. Judiciary is one of the three pillars of democracy in India. The accountability of judiciary is however is not the same as of accountability of the legislature or the executive.

One of the hallmarks of the democratic form of governance is the judiciary's independence and impartiality. Only an impartial and independent judiciary can defend individual rights and deliver equitable justice without fear of retaliation and serve justice to the people which guaranteed by the constitution.

About the ideal direction of accountability of the judges of India as quoted by P.N. Bhagwati, J. in **S.P. Gupta's case**¹, it is indeed important to have judges who are prepared to fashion new tools, methods strategies and are ready to evolve a new jurisprudence, who are judicial statesmen with a social vision and creative faculty and who have, above all, a deep sense of commitment to the Constitution with an activist approach and obligation for accountability—not to any political party in power nor to the classes which are vociferous but to the half hungry millions of India who are continually denied their human rights.

1. THE NEED FOR JUDICIAL ACCOUNTABILITY

The Supreme Court had rightly asserted that “A single dishonest judge not only dishonours himself and disgraces his office but jeopardizes the integrity of the entire judicial system.” Accountability and Reforms had mentioned, “ The judicial system of the country far from being an instrument for protecting the rights of the weak and the oppressed has become an instrument of harassment of the common people of the country.... The system remains dysfunctional for

¹ S.P. Gupta v. President of India and ors., AIR 1982 SC 149

the weak and the poor... (and has been) displaying their elitist bias.”² Mona Shukla has listed down three promotions done by Judicial Accountability:

1. It promotes the **rule of law** by deterring conduct that might compromise judicial independence, integrity and impartiality.
2. It promotes **public confidence** in judges and judiciary.
3. It promotes **institutional responsibility** by rendering the judiciary responsive to the needs of the public it serves as a separate branch of the government.³

Transparency is facilitated through the process of accountability. It is best achieved when one is accountable to law. The existing systems of accountability have failed, and the growing corruption is eating 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 removed from ordinary men and know nothing about them.” The demi god’s image has to be replaced, after all judges are also humans capable of making mistakes and committing vices. But what has gone wrong? The problem in making the judiciary accountable is discussed in the paper which will help us in understanding the issue and later find solutions to achieve it.

Accountability in the light of Independence of Judiciary

Independence of judiciary is an essential attribute of the Rule of Law, and is a part of the basic structure of the Constitution.⁴ First of all, judicial independence cannot stand by itself, something like judicial accountability must also be there.

Even in the US, often the debate over judicial selection methods is distilled to a single trade off: independence v. accountability.⁵ Elected judges are more accountable than appointed judges in the sense that the public can turn them out of office if they do not like their decisions. Hence, even in the jurisprudence of America, the difference or rather the reciprocity of the concepts of independence and accountability is prevalent. Accountability is considered inversely proportional to independence of judiciary. However, in reality, it is not so. The main

² Mona Shukla, ‘Judicial Accountability: an aspect of judicial independence’ in Judicial Accountability, Regal Publications, New Delhi, 2010, p. 4

³ Ibid, p. 4

⁴ Supreme Court Advocates on Record Association and anr. v. Union of India, AIR 1994 SC 268

⁵ John L. Warren III, Holding the Bench Accountable: Judges Qua Representatives, Washington Jurisprudence Law Review, Vol. 5, Issue 2, 2014 ed.

aim of separation of powers is to achieve the maximum extent of accountability. The separation of powers is in consonance with the independence of judiciary, in fact both imply the same thing. This would go on to mean that independence of judiciary implies accountability of the people. Conversely, till this principle of accountability is preserved, there is no violation of separation of powers. Each wing of governance had to be accountable.⁶

The control of High Courts over all subordinate Courts⁷ for instance, is one of the effective measures to enforce accountability. The power to check over subordinate Courts entrusted to the High Court preserves independence as well. No accountability to or interference of the executive and the legislature is a part of judicial independence.

In the case of **S. P. Gupta v Union of India**, the judiciary needs to be independent of outside influence, particularly of political and economic entities such as government agencies or industry associations. But judicial independence does not mean that judges and court officials should have free rein to behave as they please. Indeed, judicial independence is founded on public trust and, to maintain it, judges must uphold the highest standards of integrity and be held accountable to them. Where judges or court personnel are suspected of breaching the public's trust, fair measures must be in place to detect, investigate and sanction corrupt practices. The existence of an independent judiciary can be said to be the bulwark of governance. In a host of other rulings, the need for an independent judiciary free from the interference of unwarranted political processes has been advocated as the sine qua non of a democratic society.

Challenges in holding Judiciary Accountable

1. Impeachment being the sole procedure

According to the Indian Constitution, the only way through which the members of the higher judiciary that is the Chief Justices and Judges of Supreme Court and High Courts are accountable or can be removed is through **impeachment**. Under Article 124(4), the process of impeachment is carried out only on the grounds of proven **misbehaviour or incapacity**.

⁶ Supra 4

⁷ Article 235, The Constitution of India

No one being judge has been impeached till date. However it will be a misjudgement if one thinks that the judiciary is free from corruption. The loophole is the entire process of impeachment itself. It is undoubtedly lengthy and cumbersome.

To begin an impeachment one needs signatures to pass the resolutions. However, that becomes quite an impossible task since many MPs have their own pending individual or party cases in these judges court, so they are not willing to risk themselves. Conclusive documentary evidences are also required before they put their signatures to the motion⁸.

- In one of his interviews, Prashant Bhushan cites an example where in an impeachment proceeding against Justice Bhalla, the BJP declined to sign because L.K. Advani had been acquitted by him in the Babri Masjid demolition case.
- In the Justice Ramaswamy case, who had been charged with misusing of courts fund, yet the Congress (I) refused to cast their vote.

Although, the special 2/3rd majority will maintain the independence and also adds the seriousness to the issue. It is important to understand that at the end of the day judiciary is an important organ with huge responsibilities. An organ with extraordinary functions demands to be treated differently. A simple majority on the other hand can prove to be detrimental to independence

2. The Veeraswamy case⁹

The additional immunity with which the judges have cloaked themselves was in the Justice R. Veeraswamy case, in which it was declared that judges of **SC or HC cannot be subjected to investigation in any criminal offence of corruption**, or a FIR be registered against them without the prior permission of the CJI.¹⁰ Again it's not likely that the CJI will allow such permission, as it can bring shame to the entire Judiciary.

3. The Ramaswamy case¹¹

⁸ Background paper for the Seminar on Judicial Accountability, 'Securing Judicial Accountability' p.1, in <http://www.judicialreforms.org/files/securingjudicialaccountability.pdf>

⁹ K. Veeraswami vs Union Of India And Others 1991 SCR (3)

¹⁰ Mona Shukla, 'Judicial Accountability: an aspect of judicial independence' in Judicial Accountability, Regal Publications, New Delhi, 2010, p. 8

¹¹ Sarojini Ramaswami vs Union Of India & Ors on 27 August, 1992

the impeachment issued by the apex court failed badly due to the lack of majority vote from the Houses of the Parliament. Justice Ramaswamy was charged with misusing the court's fund but was not impeached for the refusal of one of the parties to cast a vote.

Suggestions

There is a need for a more nuanced and balanced procedure where we also demand some degree of accountability of assessing the product that comes out of the court, the amount of judicial time that has been devoted to cases and the number of adjournments which are granted.

Seeking accountability is not so much a simplistic issue that can be solved by just bringing the judges to book as it is of a wider dialogue within society of what is it that ails the system and how to find answers within the system while still protecting the its independence. Developing principle within the judiciary to find the issues which is being face is needed to maintain faith of the people in the superiority of the court.

One solution could be setting up a permanent committee of very eminent retired judges who can look into an enquiry and then make recommendations to the Chief justice. An independent enquiry like such would also give answers to the rumours that float around in media.

Conclusion

Quoting Dr. Ambedkar's last speech in the Constituent Assembly is relevant here:

"I feel, however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organs of State such as the Legislature, the Executive and the Judiciary. The factors on which the working of those organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics." One thing which is very general but worth quoting is the concept of judgement. The judiciary pronounces judgements. Judgements include the Court's reasoning and rationale behind the verdict it has propounded. This explanation, too, stands for a form of accountability. And in the end, it is pertinent to note that the Constituent Assembly agreed that the judiciary's independence is important but not its insulation. Accountability, if not already existent in its

entirety, must come into play and in full force. In the words of Chief Justice Burger of the American Supreme Court, a sense of confidence in the Courts is essential to maintain the fabric of ordered society for free people. It can be conclusively said that this sense of confidence, is impossible without some degree of accountability.